

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): December 22, 2008

Fiserv, Inc.

(Exact Name of Registrant as Specified in Charter)

Wisconsin
(State or Other Jurisdiction
of Incorporation)

0-14948
(Commission File Number)

39-1506125
(IRS Employer
Identification No.)

255 Fiserv Drive, Brookfield, Wisconsin 53045
(Address of Principal Executive Offices, Including Zip Code)

(262) 879-5000
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

KEESA Amendment

On December 22, 2008, Fiserv, Inc. (the “Company”) entered into an Amended and Restated Key Executive Employment and Severance Agreement (“Amended KEESA”) with each of the Company’s named executive officers, including its Chief Executive Officer and Chief Financial Officer, to make changes required by Section 409A of the Internal Revenue Code of 1986, as amended (“Section 409A”). To comply with Section 409A, the Amended KEESAs require a six-month delay of post-termination payments and benefits (other than payments to cover employment taxes due on such amounts) in the event that the named executive officer is a “specified employee” within the meaning of Section 409A at the time of a qualifying termination in connection with a change in control of the Company. The Amended KEESAs contain other provisions designed to comply with Section 409A, including defining when a “Separation from Service” has occurred for purposes of receiving any severance payments or benefits under the Amended KEESA. The Amended KEESAs also clarify the definition of “Accrued Benefits” by creating a separate defined term “Prorated Bonus” for purposes of calculating the named executive officer’s severance compensation in connection with a termination without cause, resignation for good reason, death, disability or retirement following a change in control. In addition, the Amended KEESAs clarify how health, life and disability benefits will or may be continued following termination in accordance with Section 409A. The Amended KEESAs do not increase the amounts payable to the named executive officers in connection with a change in control of the Company or a subsequent qualifying termination event as compared to the Key Executive Employment and Severance Agreement previously in effect.

This summary of the Amended KEESAs is qualified in its entirety by reference to the form of Amended KEESA and to Mr. Yabuki’s Amended KEESA which are filed as Exhibit 10.1 and Exhibit 10.2, respectively, with this Current Report on Form 8-K and incorporated herein by reference.

Amended Employment Agreements

On December 22, 2008, the Company entered into an Amended and Restated Employment Agreement (“Amended Employment Agreement”) with each of Jeffery W. Yabuki and Thomas W. Warsop III to make changes required by Section 409A of the Code. To comply with Section 409A, the Amended Employment Agreements require a six-month delay in post-termination payments and benefits (other than payments to cover employment taxes due on such amounts) in the event that Mr. Yabuki or Mr. Warsop is considered a “specified employee” within the meaning of Section 409A at the time of a qualifying termination. After the six-month delay, Mr. Warsop’s Amended Employment Agreement also states that his severance payment will be made in a lump sum instead of 12 monthly installments. Mr. Yabuki’s Amended Employment Agreement provides that any excise tax gross-up payment due on a payment or benefit to be received pursuant to his

Amended Employment Agreement or Amended KEESA will be subject to a six-month delay in the event Mr. Yabuki is a “specified employee” within the meaning of Section 409A at the time of a qualifying termination. However, if prior to the end of such six-month period, Mr. Yabuki is required to remit the excise tax to the Internal Revenue Service, the Company will reimburse Mr. Yabuki for the gross-up payment attributable to the excise tax payment based on his actual rate of taxation. In addition, Mr. Yabuki’s Amended Employment Agreement eliminates certain provisions which are no longer applicable due to the passage of time.

This summary of the Amended Employment Agreements of Messrs. Yabuki and Warsop is qualified in its entirety by reference to the Amended Employment Agreements which are filed as Exhibit 10.3 and Exhibit 10.4, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

| <u>Exhibit Number</u> | <u>Description</u> |
|---------------------------|--|
| 10.1 | Form of Amended and Restated Key Executive Employment and Severance Agreement, dated December 22, 2008, between the Company and each of Thomas Hirsch, Thomas Neill, and Thomas Warsop |
| 10.2 | Amended and Restated Key Executive Employment and Severance Agreement, dated December 22, 2008, between the Company and Jeffery W. Yabuki |
| 10.3 | Amended and Restated Employment Agreement, dated December 22, 2008, between the Company and Jeffery W. Yabuki |
| 10.4 | Amended and Restated Employment Agreement, dated December 22, 2008, between the Company and Thomas W. Warsop |

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: December 22, 2008

FISERV, INC.

By: /s/ Thomas J. Hirsch
Thomas J. Hirsch
Executive Vice President,
Chief Financial Officer,
Treasurer and Assistant Secretary

EXHIBIT INDEX

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**FORM OF
AMENDED AND RESTATED KEY EXECUTIVE EMPLOYMENT AND SEVERANCE AGREEMENT**

THIS AGREEMENT, made and entered into as of December 22, 2008, by and between Fiserv, Inc., a Wisconsin corporation (hereinafter referred to as the "Company"), and (hereinafter referred to as the "Executive").

WITNESSETH

WHEREAS, the Executive is employed by the Company and/or a subsidiary of the Company (hereinafter referred to collectively as the "Employer") in a key executive capacity and the Executive's services are valuable to the conduct of the business of the Company;

WHEREAS, the Company desires to continue to attract and retain dedicated and skilled management employees in a period of industry consolidation, consistent with achieving the best possible value for its shareholders in any change in control of the Company;

WHEREAS, the Company recognizes that circumstances may arise in which a change in control of the Company occurs, through acquisition or otherwise, thereby causing a potential conflict of interest between the Company's needs for the Executive to remain focused on the Company's business and for the necessary continuity in management prior to and following a change in control, and the Executive's reasonable personal concerns regarding future employment with the Employer and economic protection in the event of loss of employment as a consequence of a change in control;

WHEREAS, the Company and the Executive are desirous that any proposal for a change in control or acquisition of the Company will be considered by the Executive objectively and with reference only to the best interests of the Company and its shareholders;

WHEREAS, the Executive will be in a better position to consider the Company's best interests if the Executive is afforded reasonable economic security, as provided in this Agreement, against altered conditions of employment which could result from any such change in control or acquisition;

WHEREAS, the Executive possesses intimate knowledge of the business and affairs of the Company and has acquired certain confidential information and data with respect to the Company; and

WHEREAS, the Company desires to insure, insofar as possible, that it will continue to have the benefit of the Executive's services and to protect its confidential information and goodwill.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the parties hereto mutually covenant and agree as follows:

1. Definitions.

(a) 409A Affiliate. The term "409A Affiliate" means each entity that is required to be included in the Company's controlled group of corporations within the meaning of Section 414(b) of the Code, or that is under common control with the Company within the meaning of Section 414(c) of the Code; *provided, however*, that the phrase "at least 50 percent" shall be used in place of the phrase "at least 80 percent" each place it appears therein or in the regulations thereunder.

(b) Accrued Benefits. The term “Accrued Benefits” shall include the following amounts, payable as described herein: (i) all base salary for the time period ending with the Termination Date; (ii) reimbursement for any and all monies advanced in connection with the Executive’s employment for reasonable and necessary expenses incurred by the Executive on behalf of the Employer for the time period ending with the Termination Date; (iii) any and all other cash earned through the Termination Date and deferred at the election of the Executive or pursuant to any deferred compensation plan then in effect; (iv) notwithstanding any provision of any bonus or incentive compensation plan applicable to the Executive, but subject to any irrevocable deferral election then in effect, a lump sum amount, in cash, of any bonus or incentive compensation that has been allocated or awarded to the Executive for a fiscal year or other measuring period under the plan that ends prior to the Termination Date but has not yet been paid (pursuant to Section 5(f) or otherwise); and (v) all other payments and benefits to which the Executive (or in the event of the Executive’s death, the Executive’s surviving spouse or other beneficiary) may be entitled on the Termination Date as compensatory fringe benefits or under the terms of any benefit plan of the Employer, excluding severance payments under any Employer severance policy, practice or agreement in effect on the Termination Date. Payment of Accrued Benefits shall be made promptly in accordance with the Company’s prevailing practice with respect to clauses (i) and (ii) or, with respect to clauses (iii), (iv) and (v), pursuant to the terms of the benefit plan or practice establishing such benefits.

(c) Act. The term “Act” means the Securities Exchange Act of 1934, as amended.

(d) Affiliate and Associate. The terms “Affiliate” and “Associate” shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Act.

(e) Annual Cash Compensation. The term “Annual Cash Compensation” shall mean the sum of (i) the Executive’s Annual Base Salary (determined as of the time of the Change in Control of the Company or, if higher, immediately prior to the date the Notice of Termination is given) plus (ii) an amount equal to (A) if the Executive has been employed by the Company for at least 36 continuous months prior to the Change in Control of the Company, the highest annual incentive bonus the Executive earned with respect to any of the three fiscal years prior to the fiscal year in which the Change in Control of the Company occurs, or (B) if the Executive has not been employed by the Company for at least 36 continuous months prior to the Change in Control of the Company, the greater of (x) 60% of the Executive’s Annual Base Salary as of the time of the Change in Control of the Company or (y) the highest annual incentive bonus the Executive earned with respect to any of the two fiscal years prior to the fiscal year in which the Change in Control of the Company occurs.

(f) **Beneficial Owner.** A Person shall be deemed to be the “Beneficial Owner” of any securities:

(i) which such Person or any of such Person’s Affiliates or Associates has the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; *provided, however, that* a Person shall not be deemed the Beneficial Owner of, or to beneficially own, (A) securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person’s Affiliates or Associates until such tendered securities are accepted for purchase, or (B) securities issuable upon exercise of any rights issued pursuant to the terms of any shareholder rights agreement that the Company may adopt at any time before the issuance of such securities;

(ii) which such Person or any of such Person’s Affiliates or Associates, directly or indirectly, has the right to vote or dispose of or has “beneficial ownership” of (as determined pursuant to Rule 13d-3 of the General Rules and Regulations under the Act), including pursuant to any agreement, arrangement or understanding; *provided, however, that* a Person shall not be deemed the Beneficial Owner of, or to beneficially own, any security under this clause (ii) as a result of an agreement, arrangement or understanding to vote such security if the agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations under the Act and (B) is not also then reportable on a Schedule 13D under the Act (or any comparable or successor report); or

(iii) which are beneficially owned, directly or indirectly, by any other Person with which such Person or any of such Person’s Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy as described in clause (ii) above) or disposing of any voting securities of the Company.

(g) **Cause.** “Cause” for termination by the Employer of the Executive’s employment shall be limited to (i) the engaging by the Executive in intentional conduct not taken in good faith that the Company establishes, by clear and convincing evidence, has caused demonstrable and serious financial injury to the Employer, as evidenced by a determination in a binding and final judgment, order or decree of a court or administrative agency of competent jurisdiction, in effect after exhaustion or lapse of all rights of appeal, in an action, suit or proceeding, whether civil, criminal, administrative or investigative; (ii) conviction of a felony, as evidenced by binding and final judgment, order or decree of a court of competent jurisdiction, in effect after exhaustion of all rights of appeal, which substantially impairs the Executive’s ability to perform his duties or responsibilities; or (iii) continuing willful and unreasonable refusal by the Executive to perform the Executive’s duties or responsibilities, unless significantly changed without the Executive’s consent.

(h) Change in Control of the Company. A “Change in Control of the Company” shall be deemed to have occurred if an event set forth in any one of the following paragraphs shall have occurred:

(i) any Person (other than (A) the Company or any of its subsidiaries, (B) a trustee or other fiduciary holding securities under any employee benefit plan of the Company or any of its subsidiaries, (C) an underwriter temporarily holding securities pursuant to an offering of such securities or (D) a corporation owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of stock in the Company (“Excluded Persons”)) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates after the date of this Agreement, pursuant to express authorization by the Board that refers to this exception) representing 20% or more of either the then outstanding shares of common stock of the Company or the combined voting power of the Company’s then outstanding voting securities; or

(ii) the following individuals cease for any reason to constitute a majority of the number of directors of the Company then serving: (A) individuals who, on the date of this Agreement constituted the Board and (B) any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company) whose appointment or election by the Board or nomination for election by the Company’s shareholders was approved by a vote of at least two-thirds ($\frac{2}{3}$) of the directors then still in office who either were directors on the date of this Agreement, or whose appointment, election or nomination for election was previously so approved (collectively the “Continuing Directors”); *provided, however, that* individuals who are appointed to the Board pursuant to or in accordance with the terms of an agreement relating to a merger, consolidation, or share exchange involving the Company (or any direct or indirect subsidiary of the Company) shall not be Continuing Directors for purposes of this Agreement until after such individuals are first nominated for election by a vote of at least two-thirds ($\frac{2}{3}$) of the then Continuing Directors and are thereafter elected as directors by the shareholders of the Company at a meeting of shareholders held following consummation of such merger, consolidation, or share exchange; and, *provided further, that* in the event the failure of any such persons appointed to the Board to be Continuing Directors results in a Change in Control of the Company, the subsequent qualification of such persons as Continuing Directors shall not alter the fact that a Change in Control of the Company occurred; or

(iii) the shareholders of the Company approve a merger, consolidation or share exchange of the Company with any other corporation or approve the issuance of voting securities of the Company in connection with a merger, consolidation or share exchange of the Company (or any direct or indirect subsidiary of the Company) pursuant to applicable stock exchange requirements, other than (A) a merger, consolidation or share exchange which would result in the voting securities of the

Company outstanding immediately prior to such merger, consolidation or share exchange continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) at least 50% of the combined voting power of the voting securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger, consolidation or share exchange, or (B) a merger, consolidation or share exchange effected to implement a recapitalization of the Company (or similar transaction) in which no Person (other than an Excluded Person) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates after the date of this Agreement, pursuant to express authorization by the Board that refers to this exception) representing 20% or more of either the then outstanding shares of common stock of the Company or the combined voting power of the Company's then outstanding voting securities; or

(iv) the shareholders of the Company approve of a plan of complete liquidation or dissolution of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets (in one transaction or a series of related transactions within any period of 24 consecutive months), other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity at least 75% of the combined voting power of the voting securities of which are owned by Persons in substantially the same proportions as their ownership of the Company immediately prior to such sale.

Notwithstanding the foregoing, no "Change in Control of the Company" shall be deemed to have occurred if there is consummated any transaction or series of integrated transactions immediately following which the record holders of the common stock of the Company immediately prior to such transaction or series of transactions continue to own, directly or indirectly, in the same proportions as their ownership in the Company, an entity that owns all or substantially all of the assets or voting securities of the Company immediately following such transaction or series of transactions.

(i) Code. The term "Code" means the Internal Revenue Code of 1986, including any amendments thereto or successor tax codes thereof. Any reference to a particular provision of the Code shall be deemed to include reference to any successor provision thereto.

(j) Covered Termination. Subject to Section 2(b), the term "Covered Termination" means any Termination of Employment during the Employment Period where the Termination Date, or the date Notice of Termination is delivered, is any date prior to the end of the Employment Period.

(k) Employment Period. Subject to Section 2(b), the term "Employment Period" means a period commencing on the date of a Change in Control of the Company, and ending at 11:59 p.m. Central Time on the third anniversary of such date.

(l) Good Reason. The Executive shall have "Good Reason" for termination of employment in the event of:

(i) any breach of this Agreement by the Employer, including specifically any breach by the Employer of the agreements contained in Section 3(b), Section 4, Section 5, or Section 6, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith that the Employer remedies promptly after receipt of notice thereof given by the Executive;

(ii) any reduction in the Executive's base salary, percentage of base salary available as incentive compensation or bonus opportunity or benefits, in each case relative to those most favorable to the Executive in effect at any time during the 180-day period prior to the Change in Control of the Company or, to the extent more favorable to the Executive, those in effect at any time during the Employment Period;

(iii) the removal of the Executive from, or any failure to reelect or reappoint the Executive to, any of the positions held with the Employer on the date of the Change in Control of the Company or any other positions with the Employer to which the Executive shall thereafter be elected, appointed or assigned, except in the event that such removal or failure to reelect or reappoint relates to the termination by the Employer of the Executive's employment for Cause or by reason of disability pursuant to Section 12;

(iv) a good faith determination by the Executive that there has been a material adverse change, without the Executive's written consent, in the Executive's working conditions or status with the Employer relative to the most favorable working conditions or status in effect during the 180-day period prior to the Change in Control of the Company, or, to the extent more favorable to the Executive, those in effect at any time during the Employment Period, including but not limited to (A) a significant change in the nature or scope of the Executive's authority, powers, functions, duties or responsibilities, or (B) a significant reduction in the level of support services, staff, secretarial and other assistance, office space and accoutrements, but in each case excluding for this purpose an isolated, insubstantial and inadvertent event not occurring in bad faith that the Employer remedies within ten (10) days after receipt of notice thereof given by the Executive;

(v) the relocation of the Executive's principal place of employment to a location more than 35 miles from the Executive's principal place of employment on the date 180 days prior to the Change in Control of the Company;

(vi) the Employer requires the Executive to travel on Employer business 20% in excess of the average number of days per month the Executive was required to travel during the 180-day period prior to the Change in Control of the Company;

(vii) failure by the Company to obtain the Agreement referred to in Section 17(a) as provided therein; or

(viii) any voluntary termination of employment by the Executive where the Notice of Termination is delivered during the six (6) months following the first six (6) months after the Change in Control of the Company.

(m) Person. The term "Person" shall mean any individual, firm, partnership, corporation or other entity, including any successor (by merger or otherwise) of such entity, or a group of any of the foregoing acting in concert.

(n) Prorated Bonus. The term "Prorated Bonus" shall mean an amount equal to the sum of the following with respect to each contingent bonus or incentive compensation award made to the Executive for all uncompleted periods as of the Termination Date: (i) the value of such award, calculated as if the goals with respect to such award had been attained (at the target level, if applicable), multiplied by a fraction, the numerator of which is the number of days that have elapsed from the first day of the period to which the award relates to the Termination Date and the denominator of which is the total number of days in the period to which the award relates (without regard to the Termination Date), reduced by (ii) any amounts previously paid with respect to such award or that will be paid (without regard to this Agreement).

(o) Retirement. The term "Retirement" means the cessation of service as an employee of the Company and its Affiliates for any reason other than death, disability (as provided in Section 12), or termination for Cause, if at the time of such cessation of service either (1) the Executive is age 60 and his age plus years of service for the Company and its Affiliates is equal to or greater than 70, or (2) the Executive is age 65 or older.

(p) Separation from Service. For purposes of this Agreement, the term "Separation from Service" means the Executive's Termination of Employment, or if the Executive continues to provide services following his or her Termination of Employment, such later date as is considered a separation from service from the Company and its 409A Affiliates within the meaning of Code Section 409A. Specifically, if the Executive continues to provide services to the Company or a 409A Affiliate in a capacity other than as an employee, such shift in status is not automatically a Separation from Service.

(q) Termination of Employment. For purposes of this Agreement, the Executive's "Termination of Employment" shall be presumed to occur when the Company and the Executive reasonably anticipate that no further services will be performed by the Executive for the Company and its 409A Affiliates or that the level of bona fide services the Executive will perform as an employee of the Company and its 409A Affiliates will permanently decrease to no more than 20% of the average level of bona fide services performed by the Executive (whether as an employee or independent contractor) for the Company and its 409A Affiliates over the immediately preceding 36-month period (or such lesser period of services). Whether the Executive has experienced a Termination of Employment shall be determined by the Employer in good faith and consistent with Section 409A of the Code. Notwithstanding the foregoing, if the Executive takes a leave of absence for purposes of military leave, sick leave or other bona fide reason, the Executive will not be deemed to have experienced a Termination of Employment for the first six (6) months of the leave of absence, or if longer, for so long as the Executive's right to reemployment is provided either by statute or by contract, including this Agreement; *provided that* if the leave of absence is due to a medically determinable physical or mental impairment that can be expected to result in death or last for a continuous period of not less than six (6) months, where such impairment causes the Executive to be unable to perform the duties of his or her position of employment or any substantially similar position of employment, the leave may be extended by the Employer for up to 29 months without causing a Termination of Employment.

(r) Termination Date. Except as otherwise provided in Section 2(b), Section 10(b), and Section 17(a), the term “Termination Date” means (i) if the Executive’s Termination of Employment is by the Executive’s death, the date of death; (ii) if the Executive’s Termination of Employment is by reason of Retirement, the date of such retirement; (iii) if the Executive’s Termination of Employment is by reason of disability pursuant to Section 12, the earlier of 30 days after the Notice of Termination is given or one day prior to the end of the Employment Period; (iv) if the Executive’s Termination of Employment is by the Executive voluntarily (other than for Good Reason), the date the Notice of Termination is given; and (v) if the Executive’s Termination of Employment is by the Employer (other than by reason of disability pursuant to Section 12) or by the Executive for Good Reason, the earlier of 30 days after the Notice of Termination is given or one day prior to the end of the Employment Period. Notwithstanding the foregoing,

(A) If termination is for Cause pursuant to Section 1(g)(iii) and if the Executive has cured the conduct constituting such Cause as described by the Employer in its Notice of Termination within such 30-day or shorter period, then the Executive’s employment hereunder shall continue as if the Employer had not delivered its Notice of Termination.

(B) If the Executive shall in good faith give a Notice of Termination for Good Reason and the Employer notifies the Executive that a dispute exists concerning the termination within the 15-day period following receipt thereof, then the Executive may elect to continue his or her employment during such dispute and the Termination Date shall be determined under this paragraph. If the Executive so elects and it is thereafter determined that Good Reason did exist, the Termination Date shall be the earliest of (1) the date on which the dispute is finally determined, either (x) by mutual written agreement of the parties or (y) in accordance with Section 22, (2) the date of the Executive’s death or (3) one day prior to the end of the Employment Period. If the Executive so elects and it is thereafter determined that Good Reason did not exist, then the employment of the Executive hereunder shall continue after such determination as if the Executive had not delivered the Notice of Termination asserting Good Reason and there shall be no Termination Date arising out of such Notice. In either case, this Agreement continues, until the Termination Date, if any, as if the Executive had not delivered the Notice of Termination except that, if it is finally determined that Good Reason did exist, the Executive shall in no case be denied the benefits described in Section 9 (including a Termination Payment) based on events occurring after the Executive delivered his Notice of Termination.

(C) Except as provided in Section 1(q)(B), if the party receiving the Notice of Termination notifies the other party that a dispute exists concerning the termination within the appropriate period following receipt thereof and it is finally determined that the reason asserted in such Notice of Termination did not exist, then (1) if such Notice was delivered by the Executive, the Executive will be deemed to have voluntarily terminated his employment and the Termination Date shall

be the earlier of the date 15 days after the Notice of Termination is given or one day prior to the end of the Employment Period and (2) if delivered by the Company, the Company will be deemed to have terminated the Executive other than by reason of death, disability or Cause.

2. Termination or Cancellation Prior to Change in Control.

(a) Subject to Section 2(b), the Employer and the Executive shall each retain the right to terminate the employment of the Executive at any time prior to a Change in Control of the Company. Subject to Section 2(b), in the event the Executive's employment is terminated prior to a Change in Control of the Company, this Agreement shall be terminated and cancelled and of no further force and effect, and any and all rights and obligations of the parties hereunder shall cease.

(b) Anything in this Agreement to the contrary notwithstanding, if a Change in Control of the Company occurs and if the Executive's employment is terminated (other than a termination due to the Executive's death or as a result of the Executive's disability) during the period of 180 days prior to the date on which the Change in Control of the Company occurs, and if it is reasonably demonstrated by the Executive that such termination of employment (i) was at the request of a third party who has taken steps reasonably calculated to effect a Change in Control of the Company or (ii) otherwise arose in connection with or in anticipation of a Change in Control of the Company, then for all purposes of this Agreement such termination of employment shall be deemed a "Covered Termination," "Notice of Termination" shall be deemed to have been given, and the "Employment Period" shall be deemed to have begun on the date of such termination which shall be deemed to be the "Termination Date" and the date of the Change in Control of the Company for purposes of this Agreement.

3. Employment Period; Vesting of Certain Benefits

(a) If a Change in Control of the Company occurs when the Executive is employed by the Employer, the Employer will continue thereafter to employ the Executive during the Employment Period, and the Executive will remain in the employ of the Employer in accordance with and subject to the terms and provisions of this Agreement. Any Termination of Employment during the Employment Period, whether by the Company or the Employer, shall be deemed a termination by the Company for purposes of this Agreement.

(b) If a Change in Control of the Company occurs when the Executive is employed by the Employer, (i) the Company shall cause all restrictions on restricted stock awards made to the Executive prior to the Change in Control of the Company to lapse such that the Executive is fully and immediately vested in the Executive's restricted stock upon such a Change in Control of the Company; and (ii) the Company shall cause all stock options granted to the Executive prior to the Change in Control of the Company pursuant to the Company's stock option plan(s) to be fully and immediately vested upon such a Change in Control of the Company.

4. Duties. During the Employment Period, the Executive shall, in the same capacities and positions held by the Executive at the time of the Change in Control of the Company or in such other capacities and positions as may be agreed to by the Employer and the Executive in writing, devote the Executive's best efforts and all of the Executive's business time, attention and skill to the business and affairs of the Employer, as such business and affairs now exist and as they may hereafter be conducted; *provided, however, that* the Executive shall be entitled (a) to serve as director of other corporations and (b) to devote time to personal and financial activities, in each case so long as such activities do not materially affect the Executive's ability to perform the Executive's duties hereunder.

5. Compensation. During the Employment Period, the Executive shall be compensated as follows:

(a) The Executive shall receive, at reasonable intervals (but not less often than monthly) and in accordance with such standard policies as may be in effect immediately prior to the Change in Control of the Company, an annual base salary in cash equivalent of not less than twelve times the Executive's highest monthly base salary for the twelve-month period immediately preceding the month in which the Change in Control of the Company occurs or, if higher, an annual base salary at the rate in effect immediately prior to the Change in Control of the Company (which base salary shall, unless otherwise agreed in writing by the Executive and subject to any irrevocable deferral election then in effect, include the current receipt by the Executive of any amounts which, prior to the Change in Control of the Company, the Executive had elected to defer, whether such compensation is deferred under Section 401(k) of the Code or otherwise), subject to adjustment as hereinafter provided in Section 6 (such salary amount as adjusted upward from time to time is hereafter referred to as the "Annual Base Salary").

(b) The Executive shall receive fringe benefits at least equal in value to the highest value of such benefits provided for the Executive at any time during the 180-day period immediately prior to the Change in Control of the Company or, if more favorable to the Executive, those provided generally at any time during the Employment Period to any executives of the Employer of comparable status and position to the Executive; and shall be reimbursed, at such intervals and in accordance with such standard policies that are most favorable to the Executive that were in effect at any time during the 180-day period immediately prior to the Change in Control of the Company, for any and all monies advanced in connection with the Executive's employment for reasonable and necessary expenses incurred by the Executive on behalf of the Employer, including travel expenses.

(c) The Executive and/or the Executive's family, as the case may be, shall be included, to the extent eligible thereunder (which eligibility shall not be conditioned on the Executive's salary grade or on any other requirement which excludes persons of comparable status to the Executive unless such exclusion was in effect for such plan or an equivalent plan at any time during the 180-day period immediately prior to the Change in Control of the Company), in any and all plans providing benefits for the Employer's salaried employees in general, including but not limited to group life insurance, hospitalization, medical, dental, profit sharing and stock bonus plans; *provided, that, (i)* in no event shall the aggregate level of benefits under such plans in which the Executive is included be less than the aggregate level of benefits under plans of the Employer of the type referred to in this Section 5(c) in which the Executive was participating at any time during the 180-day period immediately prior to the Change in Control of the Company

and (ii) in no event shall the aggregate level of benefits under such plans be less than the aggregate level of benefits under plans of the type referred to in this Section 5(c) provided at any time after the Change in Control of the Company to any executive of the Employer of comparable status and position to the Executive.

(d) The Executive shall annually be entitled to not less than the amount of paid vacation and not fewer than the highest number of paid holidays to which the Executive was entitled annually at any time during the 180-day period immediately prior to the Change in Control of the Company or such greater amount of paid vacation and number of paid holidays as may be made available annually to other executives of the Employer of comparable status and position to the Executive at any time during the Employment Period.

(e) The Executive shall be included in all plans providing additional benefits to executives of the Employer of comparable status and position to the Executive, including but not limited to deferred compensation, split-dollar life insurance, supplemental retirement, stock option, stock appreciation, stock bonus and similar or comparable plans; *provided, that*, (i) in no event shall the aggregate level of benefits under such plans be less than the highest aggregate level of benefits under plans of the Employer of the type referred to in this Section 5(c) in which the Executive was participating at any time during the 180-day period immediately prior to the Change in Control of the Company; (ii) in no event shall the aggregate level of benefits under such plans be less than the aggregate levels of benefits under plans of the type referred to in this Section 5(e) provided at any time after the Change in Control of the Company to any executive of the Employer comparable in status and position to the Executive; and (iii) the Employer's obligation to include the Executive in bonus or incentive compensation plans shall be determined by Section 5(f).

(f) To assure that the Executive will have an opportunity to earn incentive compensation after a Change in Control of the Company, the Executive shall be included in a bonus plan of the Employer which shall satisfy the standards described below (such plan, the "Bonus Plan"). Bonuses under the Bonus Plan shall be payable with respect to achieving such financial or other goals reasonably related to the business of the Employer as the Employer shall establish (the "Goals"), all of which Goals shall be attainable, prior to the end of the Employment Period, with approximately the same degree of probability as the most attainable goals under the Employer's bonus plan or plans as in effect at any time during the 180-day period immediately prior to the Change in Control of the Company (whether one or more, the "Company Bonus Plan") and in view of the Employer's existing and projected financial and business circumstances applicable at the time. The amount of the bonus (the "Bonus Amount") that the Executive is eligible to earn under the Bonus Plan shall be no less than the amount of the Executive's maximum award provided in such Company Bonus Plan (such bonus amount herein referred to as the "Targeted Bonus"), and in the event the Goals are not achieved such that the entire Targeted Bonus is not payable, the Bonus Plan shall provide for a payment of a Bonus Amount equal to a portion of the Targeted Bonus reasonably related to that portion of the Goals which were achieved. Payment of the Bonus Amount shall not be affected by any circumstance occurring subsequent to the end of the Employment Period, including the Executive's Termination of Employment.

6. Annual Compensation Adjustments. During the Employment Period, the Board of Directors of the Company (or an appropriate committee thereof) will consider and appraise, at least annually, the contributions of the Executive to the Company, and in accordance with the Company's practice prior to the Change in Control of the Company, due consideration shall be given to the upward adjustment of the Executive's Annual Base Salary, at least annually, (a) commensurate with increases generally given to other executives of the Company of comparable status and position to the Executive, and (b) as the scope of the Company's operations or the Executive's duties expand.

7. Termination For Cause or Without Good Reason. If there is a Covered Termination for Cause or due to the Executive's voluntarily terminating his employment other than for Good Reason (any such terminations to be subject to the procedures set forth in Section 13), then the Executive shall be entitled to receive only Accrued Benefits.

8. Termination Giving Rise to a Termination Payment. If there is a Covered Termination by the Executive for Good Reason, or by the Company other than by reason of (i) death, (ii) disability pursuant to Section 12, or (iii) Cause (any such terminations to be subject to the procedures set forth in Section 13), then the Executive shall be entitled to receive, and the Company shall promptly pay, Accrued Benefits and, in lieu of further base salary for periods following the Termination Date, as liquidated damages and additional severance pay and in consideration of the covenant of the Executive set forth in Section 14(a), the Termination Payment and the Prorated Bonus.

9. Payments Upon Termination.

(a) Termination Payment.

(i) Subject to Section 9(a)(iii), the "Termination Payment" shall be an amount equal to the Annual Cash Compensation times two (2).

(ii) The Termination Payment and the Prorated Bonus shall be paid to the Executive in cash equivalent on the first day of the seventh month following the month in which the Executive's Separation from Service occurs, without interest thereon; *provided that*, if on the date of the Executive's Separation from Service, neither the Company nor any other entity that is considered a "service recipient" with respect to the Executive within the meaning of Code Section 409A has any stock which is publicly traded on an established securities market (within the meaning of Treasury Regulation Section 1.897-1(m)) or otherwise, then the Termination Payment and the Prorated Bonus shall be paid to the Executive in cash equivalent within ten (10) business days after the Termination Date, or if the Executive's Termination Date is pursuant to Section 2(b), within ten (10) business days after the date of the Change in Control of the Company (as defined without reference to Section 2(b)). Such lump sum payment shall not be reduced by any present value or similar factor, and the Executive shall not be required to mitigate the amount of the Termination Payment and Prorated Bonus by securing other employment or otherwise, nor will such Termination Payment and Prorated Bonus be reduced by reason of the Executive securing other employment or for any other reason. The Termination Payment and Prorated Bonus shall be in lieu of, and acceptance by the Executive of the Termination

Payment and Prorated Bonus shall constitute the Executive's release of any rights of the Executive to, any other cash severance payments under any Company severance policy, practice or agreement.

(iii) Notwithstanding any other provision of this Agreement, if any portion of the Termination Payment or any other payment under this Agreement, or under any other agreement with or plan of the Employer (in the aggregate, "Total Payments"), would constitute an "excess parachute payment," then the Executive shall have the option to have the Total Payments to be made to the Executive reduced such that the value of the aggregate Total Payments that the Executive is entitled to receive shall be One Dollar (\$1) less than the maximum amount which the Executive may receive without becoming subject to the tax imposed under Section 4999 of the Code. For purposes of this Agreement, the terms "excess parachute payment" and "parachute payments" shall have the meanings assigned to them in Section 280G of the Code and such "parachute payments" shall be valued as provided therein. Present value for purposes of this Agreement shall be calculated in accordance with Section 1274(b)(2) of the Code. Within 40 days following a Covered Termination or notice by one party to the other of its belief that there is a payment or benefit due the Executive that will result in an "excess parachute payment" as defined in Section 280G of the Code, the Executive and the Company, at the Company's expense, shall obtain the opinion (which need not be unqualified) of nationally recognized tax counsel ("National Tax Counsel") selected by the Company's independent auditors and reasonably acceptable to the Executive (which may be regular outside counsel to the Company), which opinion sets forth (A) the amount of the Base Period Income, (B) the amount and present value of Total Payments, (C) the amount and present value of any excess parachute payments determined without regard to any reduction of Total Payments pursuant to this Section 9(a)(ii) and (D) the net after-tax proceeds to the Executive, taking into account the tax imposed under Section 4999 of the Code if (x) the Total Payments were reduced in accordance with the first sentence of this Section 9(a)(iii) or (y) the Total Payments were not so reduced. As used in this Agreement, the term "Base Period Income" means an amount equal to the Executive's "annualized includable compensation for the base period" as defined in Section 280G(d)(1) of the Code. For purposes of such opinion, the value of any noncash benefits or any deferred payment or benefit shall be determined by the Company's independent auditors in accordance with the principles of Section 280G(d)(3) and (4) of the Code, which determination shall be evidenced in a certificate of such auditors addressed to the Company and the Executive. The opinion of National Tax Counsel shall be addressed to the Company and the Executive and shall be binding upon the Company and the Executive. If such National Tax Counsel opinion determines that there would be an excess parachute payment, then, at the Executive's sole discretion, the Termination Payment hereunder or any other payment or benefit determined by such counsel to be includable in Total Payments may be reduced or eliminated as specified by the Executive in writing delivered to the Company within thirty days of his receipt of such opinion so that under the bases of calculations set forth in such opinion there will be no excess parachute payment. If such National Tax Counsel so requests in connection with the opinion required by this Section 9(a), the Executive and the Company shall obtain, at the Company's expense, and the National Tax Counsel may rely on, the advice of a firm of recognized executive compensation consultants as to the reasonableness of any item of compensation to be received by the Executive solely with respect to its status under Section 280G of the Code and the regulations thereunder.

(iv) The Company agrees to bear all costs associated with, and to indemnify and hold harmless, the National Tax Counsel of and from any and all claims, damages, and expenses resulting from or relating to its determinations pursuant to this Section 9(a), except for claims, damages or expenses resulting from the gross negligence or willful misconduct of such firm.

(b) Additional Benefits. If there is a Covered Termination and the Executive is entitled to Accrued Benefits, the Termination Payment and the Prorated Bonus, then the Company shall provide to the Executive the following additional benefits:

(i) The Executive shall receive, until the end of the second calendar year following the calendar year in which the Executive's Separation from Service occurs, at the expense of the Company, outplacement services, on an individualized basis at a level of service commensurate with the Executive's status with the Company immediately prior to the date of the Change in Control of the Company (or, if higher, immediately prior to the Executive's Termination of Employment), provided by a nationally recognized executive placement firm selected by the Company; *provided that* the cost to the Company of such services shall not exceed 10% of the Executive's Annual Base Salary.

(ii) Until the earlier of the end of the Employment Period or such time as the Executive has obtained new employment and is covered by benefits which in the aggregate are at least equal in value to the following benefits:

(A) The Executive shall continue to be covered, at the expense of the Company, by the same or equivalent hospitalization, medical and dental coverage as was required hereunder with respect to the Executive immediately prior to the date the Notice of Termination is given. If, following the end of the COBRA continuation period, such hospitalization, medical or dental coverage is provided under a health plan that is subject to Section 105(h) of the Code, then benefits payable under such health plan shall comply with the requirements of Treasury regulation section 1.409A-3(i)(1)(iv) and, if necessary, the Company shall amend such health plan to comply therewith. If, following the end of the COBRA continuation period, the Company's health plan does not permit continued coverage by Executive and his covered dependents, then the Company may satisfy its obligations hereunder by purchasing an individual insurance policy on Executive's and his covered dependents' behalf or enrolling Executive and his covered dependents in a state-sponsored high risk health pool if individual insurance is not able to be obtained, all at the Company's expense.

(B) If the Executive elects to convert his group life insurance to an individual policy, then the Company shall pay the Executive's premiums for such conversion policies. Notwithstanding the foregoing, if the Executive's Termination Payment is delayed for six (6) months following his Separation from Service, then during the first six (6) months following

the Executive's Separation from Service, the Executive shall pay the conversion premiums and after the end of such six (6) month period, the Company shall make a cash equivalent payment to the Executive equal to the aggregate premiums paid by the Executive for such coverage, without interest thereon.

If the Executive is entitled to the Termination Payment pursuant to Section 2(b), then within ten (10) days following the Change in Control of the Company (determined without regard to Section 2(b)), the Company shall reimburse the Executive for any COBRA premiums the Executive paid for his hospitalization, medical and dental coverage under COBRA from the Executive's Termination Date through the date of the Change in Control of the Company (determined without regard to Section 2(b)).

(iii) The Company shall reimburse the Executive for up to \$15,000 in the aggregate of fees and expenses of consultants and/or legal or accounting advisors engaged by the Executive to advise the Executive as to matters relating to the computation of benefits due and payable under this Section 9.

10. Death.

(a) Except as provided in Section 10(b), in the event of a Covered Termination due to the Executive's death, the Executive's estate, heirs and beneficiaries shall receive all the Executive's Accrued Benefits through the Termination Date and, no later than 90 days after the Executive's death, the Prorated Bonus.

(b) In the event the Executive dies after a Notice of Termination is given (i) by the Company or (ii) by the Executive for Good Reason, the Executive's estate, heirs and beneficiaries shall be entitled to the benefits described in Section 10(a) and, subject to the provisions of this Agreement, to such Termination Payment as the Executive would have been entitled to had the Executive lived, except that the Termination Payment shall be paid within 90 days following the date of the Executive's death. For purposes of this Section 10(b), the Termination Date shall be the earlier of 30 days following the giving of the Notice of Termination, subject to extension pursuant to Section 1(m), or one day prior to the end of the Employment Period.

11. Retirement. If, during the Employment Period, the Executive and the Employer shall execute an agreement providing for the early retirement of the Executive from the Employer, or the Executive shall otherwise give notice that he is voluntarily choosing to retire early from the Employer, the Executive shall receive Accrued Benefits through the Termination Date; *provided that* if the Executive's employment is terminated by the Executive for Good Reason or by the Company other than by reason of death, disability or Cause and the Executive also, in connection with such termination, elects voluntary early retirement, then the Executive shall also be entitled to receive a Termination Payment and the Prorated Bonus pursuant to Section 8.

12. Termination for Disability. If, during the Employment Period, as a result of the Executive's disability due to physical or mental illness or injury (regardless of whether such illness or injury is job-related), the Executive shall have been absent from the

Executive's duties hereunder on a full-time basis for a period of six (6) consecutive months and, within 30 days after the Company notifies the Executive in writing that it intends to terminate the Executive's employment (which notice shall not constitute the Notice of Termination contemplated below), the Executive shall not have returned to the performance of the Executive's duties hereunder on a full-time basis, the Company may terminate the Executive's employment for purposes of this Agreement pursuant to a Notice of Termination given in accordance with Section 13. If the Executive's employment is terminated on account of the Executive's disability in accordance with this Section, the Executive shall receive Accrued Benefits through the Termination Date and, no later than 90 days after the Executive's Separation from Service, the Prorated Bonus, and shall remain eligible for all benefits provided by any long term disability programs of the Employer in effect at the time of such termination.

13. Termination Notice and Procedure. Any Covered Termination by the Company or the Executive (other than a termination of the Executive's employment that is a Covered Termination by virtue of Section 2(b)) shall be communicated by a written notice of termination ("Notice of Termination") to the Executive, if such Notice is given by the Company, and to the Company, if such Notice is given by the Executive, all in accordance with the following procedures and those set forth in Section 24:

(a) If such termination is for disability, Cause or Good Reason, the Notice of Termination shall indicate in reasonable detail the facts and circumstances alleged to provide a basis for such termination.

(b) Any Notice of Termination by the Company shall have been approved, prior to the giving thereof to the Executive, by a resolution duly adopted by a majority of the directors of the Company (or any successor corporation) then in office.

(c) If the Notice is given by the Executive for Good Reason, the Executive may cease performing his duties hereunder on or after the date 15 days after the delivery of Notice of Termination and shall in any event cease employment on the Termination Date. If the Notice is given by the Company, then the Executive may cease performing his duties hereunder on the date of receipt of the Notice of Termination, subject to the Executive's rights hereunder.

(d) The Executive shall have 30 days, or such longer period as the Company may determine to be appropriate, to cure any conduct or act, if curable, alleged to provide grounds for termination of the Executive's employment for Cause under this Agreement pursuant to Section 1(g)(iii).

(e) The recipient of any Notice of Termination shall personally deliver or mail in accordance with Section 24 written notice of any dispute relating to such Notice of Termination to the party giving such Notice within 15 days after receipt thereof; *provided, however, that* if the Executive's conduct or act alleged to provide grounds for termination by the Company for Cause is curable, then such period shall be 30 days. After the expiration of such period, the contents of the Notice of Termination shall become final and not subject to dispute.

14. Further Obligations of the Executive.

(a) Competition. The Executive agrees that, in the event of any Covered Termination where the Executive is entitled to Accrued Benefits and the Termination Payment, the Executive shall not, for a period expiring six (6) months after the Termination Date, without the prior written approval of the Company's Board of Directors, participate in the management of, be employed by or own any business enterprise at a location within the United States that engages in substantial competition with the Company or its subsidiaries, where such enterprise's revenues from any competitive activities amount to 10% or more of such enterprise's net revenues and sales for its most recently completed fiscal year; *provided, however, that* nothing in this Section 14(a) shall prohibit the Executive from owning stock or other securities of a competitor amounting to less than five percent of the outstanding capital stock of such competitor.

(b) Confidentiality. During and following the Executive's employment by the Company, the Executive shall hold in confidence and not directly or indirectly disclose or use or copy or make lists of any confidential information or proprietary data of the Company (including that of the Employer), except to the extent authorized in writing by the Board of Directors of the Company or required by any court or administrative agency, other than to an employee of the Company or a person to whom disclosure is reasonably necessary or appropriate in connection with the performance by the Executive of duties as an executive of the Company. Confidential information shall not include any information known generally to the public or any information of a type not otherwise considered confidential by persons engaged in the same business or a business similar to that of the Company. All records, files, documents and materials, or copies thereof, relating to the business of the Company which the Executive shall prepare, or use, or come into contact with, shall be and remain the sole property of the Company and shall be promptly returned to the Company upon termination of employment with the Company.

(c) No Solicitation. The Executive agrees that, in the event of any Covered Termination where the Executive is entitled to Accrued Benefits, the Termination Payment and the Prorated Bonus, the Executive shall not, for a period expiring two years after the Termination Date, without the prior written approval of the Company's Board of Directors, hire or solicit for employment any person who is or was employed by the Company during the then immediately preceding 12 months, other than pursuant to a general published solicitation of employment.

15. Expenses and Interest. If, after a Change in Control of the Company, (a) a dispute arises with respect to the enforcement of the Executive's rights under this Agreement or (b) any legal or arbitration proceeding shall be brought to enforce or interpret any provision contained herein or to recover damages for breach hereof, in either case so long as the Executive is not acting in bad faith, then the Company shall reimburse the Executive for any reasonable attorneys' fees and necessary costs and disbursements incurred as a result of the dispute, legal or arbitration proceeding ("Expenses"), and prejudgment interest on any money judgment or arbitration award obtained by the Executive calculated at the rate of interest announced by The Bank of New York, from time to time at its prime or base lending rate from the date that payments to him or her should have been made under this Agreement. Within ten (10) days after the Executive's written request therefor (but in no event later than the end of the calendar year following the calendar year in which such Expense is incurred), the Company shall reimburse the Executive, or such other person or entity as the Executive may designate in writing to the Company, the Executive's reasonable Expenses.

16. Payment Obligations Absolute. The Company's obligation during and after the Employment Period to pay the Executive the amounts and to make the benefit and other arrangements provided herein shall be absolute and unconditional and shall not be affected by any circumstances, including, without limitation, any setoff, counterclaim, recoupment, defense or other right which the Company may have against him or anyone else. Except as provided in Section 15, all amounts payable by the Company hereunder shall be paid without notice or demand. Each and every payment made hereunder by the Company shall be final, and the Company will not seek to recover all or any part of such payment from the Executive, or from whomsoever may be entitled thereto, for any reason whatsoever.

17. Successors.

(a) If the Company sells, assigns or transfers all or substantially all of its business and assets to any Person or if the Company merges into or consolidates or otherwise combines (where the Company does not survive such combination) with any Person (any such event, a "Sale of Business"), then the Company shall assign all of its right, title and interest in this Agreement as of the date of such event to such Person, and the Company shall cause such Person, by written agreement in form and substance reasonably satisfactory to the Executive, to expressly assume and agree to perform from and after the date of such assignment all of the terms, conditions and provisions imposed by this Agreement upon the Company. Failure of the Company to obtain such agreement prior to the effective date of such Sale of Business shall be a breach of this Agreement constituting "Good Reason" hereunder, except that for purposes of implementing the foregoing the date upon which such Sale of Business becomes effective shall be deemed the Termination Date. In case of such assignment by the Company and of assumption and agreement by such Person, as used in this Agreement, "Company" shall thereafter mean such Person which executes and delivers the agreement provided for in this Section 17 or which otherwise becomes bound by all the terms and provisions of this Agreement by operation of law, and this Agreement shall inure to the benefit of, and be enforceable by, such Person. The Executive shall, in his or her discretion, be entitled to proceed against any or all of such Persons, any Person which theretofore was such a successor to the Company and the Company (as so defined) in any action to enforce any rights of the Executive hereunder. Except as provided in this Section 17(a), this Agreement shall not be assignable by the Company. This Agreement shall not be terminated by the voluntary or involuntary dissolution of the Company.

(b) This Agreement and all rights of the Executive shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, heirs and beneficiaries. All amounts payable to the Executive under Sections 7, 8, 9, 10, 11, 12 and 15 if the Executive had lived shall be paid, in the event of the Executive's death, to the Executive's estate, heirs and representatives; *provided, however, that* the foregoing shall not be construed to modify any terms of any benefit plan of the Employer, as such terms are in effect on the date of the Change in Control of the Company, that expressly govern benefits under such plan in the event of the Executive's death.

18. Severability. The provisions of this Agreement shall be regarded as divisible, and if any of said provisions or any part hereof are declared invalid or unenforceable by a court of competent jurisdiction, the validity and enforceability of the remainder of such provisions or parts hereof and the applicability thereof shall not be affected thereby.

19. Contents of Agreement; Waiver of Rights; Amendment. This Agreement sets forth the entire understanding between the parties hereto with respect to the subject matter hereof, and the Executive hereby waives all rights under, any prior or other agreement or understanding between the parties with respect to such subject matter. This Agreement may not be amended or modified at any time except by written instrument executed by the Company and the Executive.

20. Withholding. The Company shall be entitled to withhold from amounts to be paid to the Executive hereunder any federal, state or local withholding or other taxes or charges which it is from time to time required to withhold; *provided that* the amount so withheld shall not exceed the minimum amount required to be withheld by law unless otherwise elected by the Executive in writing. In addition, if prior to the date of payment of the Termination Payment or Prorated Bonus hereunder, the Federal Insurance Contributions Act (FICA) tax imposed under Sections 3101, 3121(a) and 3121(v)(2) of the Code, where applicable, becomes due with respect to any payment or benefit to be provided hereunder, the Company may provide for an immediate payment of the amount needed to pay the Executive's portion of such tax (plus an amount equal to the taxes that will be due on such amount) and the Executive's Termination Payment or Prorated Bonus shall be reduced accordingly. The Company shall be entitled to rely on an opinion of the National Tax Counsel if any question as to the amount or requirement of any such withholding shall arise.

21. Certain Rules of Construction. No party shall be considered as being responsible for the drafting of this Agreement for the purpose of applying any rule construing ambiguities against the drafter or otherwise. No draft of this Agreement shall be taken into account in construing this Agreement. Any provision of this Agreement which requires an agreement in writing shall be deemed to require that the writing in question be signed by the Executive and an authorized representative of the Company.

22. Governing Law; Resolution of Disputes. This Agreement and the rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Wisconsin, without reference to conflict of law principles thereof. Any dispute arising out of this Agreement shall, at the Executive's election, be determined by arbitration under the rules of the American Arbitration Association then in effect (in which case both parties shall be bound by the arbitration award) or by litigation. Whether the dispute is to be settled by arbitration or litigation, the venue for the arbitration or litigation shall be Milwaukee, Wisconsin or, at the Executive's election, if the Executive is not then residing or working in the Milwaukee, Wisconsin metropolitan area, in the judicial district encompassing the city in which the Executive resides; *provided, that*, if the Executive is not then residing in the United States, the election of the Executive with respect to such venue shall be either Milwaukee, Wisconsin or in the judicial district encompassing that city in the United States among the thirty cities having the largest population (as determined by the most recent United States Census data available at the Termination Date) which is closest to the Executive's residence. The parties consent to personal jurisdiction in each trial court in the selected venue having subject matter jurisdiction notwithstanding their residence or situs, and each party irrevocably consents to service of process in the manner provided hereunder for the giving of notices.

23. Additional Section 409A Provisions.

(a) If, after the date of a Change in Control of the Company, any payment amount or the value of any benefit under this Agreement is required to be included in the Executive's income prior to the date such amount is actually paid or the benefit provided as a result of the failure of this Agreement (or any other arrangement that is required to be aggregated with this Agreement under Code Section 409A) to comply with Code Section 409A, then the Executive shall receive a distribution, in a lump sum, within 90 days after the date it is finally determined that the Agreement (or such other arrangement that is required to be aggregated with this Agreement) fails to meet the requirements of Section 409A of the Code; such distribution shall equal the amount required to be included in the Executive's income as a result of such failure and shall reduce the amount of payments or benefits otherwise due hereunder.

(b) The Company and the Executive intend the terms of this Agreement to be in compliance with Section 409A of the Code. The Company does not guarantee the tax treatment or tax consequences associated with any payment or benefit, including but not limited to consequences related to Section 409A of the Code. To the maximum extent permissible, any ambiguous terms of this Agreement shall be interpreted in a manner that avoids a violation of Section 409A of the Code.

(c) If the Executive believes he is entitled to a payment or benefit pursuant to the terms of this Agreement that was not timely paid or provided, and such payment or benefit is considered deferred compensation subject to the requirements of Section 409A of the Code, the Executive acknowledges that to avoid an additional tax on such payment or benefit pursuant to the provisions of Section 409A of the Code, the Executive must make a reasonable, good faith effort to collect such payment or benefit **no later than 90 days** after the latest date upon which the payment could have been timely made or benefit timely provided without violating Section 409A of the Code, and if not paid or provided, must take further enforcement measures **within 180 days** after such latest date.

24. Notice. Notices given pursuant to this Agreement shall be in writing and, except as otherwise provided by Section 13(d), shall be deemed given when actually received by the Executive or actually received by the Company's Secretary or any officer of the Company other than the Executive. If mailed, such notices shall be mailed by United States registered or certified mail, return receipt requested, addressee only, postage prepaid, if to the Company, to Fiserv, Inc., Attention: Secretary (or President, if the Executive is then Secretary), 255 Fiserv Drive, Brookfield, Wisconsin 53045, or if to the Executive, at the address set forth below the Executive's signature to this Agreement, or to such other address as the party to be notified shall have theretofore given to the other party in writing.

25. No Waiver. No waiver by either party at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by the other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same time or any prior or subsequent time.

26. Headings. The headings herein contained are for reference only and shall not affect the meaning or interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

FISERV, INC.

By: _____
Name:
Title:

EXECUTIVE:

Address: _____

AMENDED AND RESTATED KEY EXECUTIVE EMPLOYMENT AND SEVERANCE AGREEMENT

THIS AGREEMENT, made and entered into as of the 22nd day of December, 2008, by and between Fiserv, Inc., a Wisconsin corporation (hereinafter referred to as the "Company"), and Jeffery W. Yabuki (hereinafter referred to as the "Executive").

WITNESSETH

WHEREAS, the Executive is employed by the Company and/or a subsidiary of the Company (hereinafter referred to collectively as the "Employer") in a key executive capacity and the Executive's services are valuable to the conduct of the business of the Company;

WHEREAS, the Company desires to continue to attract and retain dedicated and skilled management employees in a period of industry consolidation, consistent with achieving the best possible value for its shareholders in any change in control of the Company;

WHEREAS, the Company recognizes that circumstances may arise in which a change in control of the Company occurs, through acquisition or otherwise, thereby causing a potential conflict of interest between the Company's needs for the Executive to remain focused on the Company's business and for the necessary continuity in management prior to and following a change in control, and the Executive's reasonable personal concerns regarding future employment with the Employer and economic protection in the event of loss of employment as a consequence of a change in control;

WHEREAS, the Company and the Executive are desirous that any proposal for a change in control or acquisition of the Company will be considered by the Executive objectively and with reference only to the best interests of the Company and its shareholders;

WHEREAS, the Executive will be in a better position to consider the Company's best interests if the Executive is afforded reasonable economic security, as provided in this Agreement, against altered conditions of employment which could result from any such change in control or acquisition;

WHEREAS, the Executive possesses intimate knowledge of the business and affairs of the Company and has acquired certain confidential information and data with respect to the Company; and

WHEREAS, the Company desires to insure, insofar as possible, that it will continue to have the benefit of the Executive's services and to protect its confidential information and goodwill.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the parties hereto mutually covenant and agree as follows:

1. Definitions.

(a) **409A Affiliate.** The term "409A Affiliate" means each entity that is required to be included in the Company's controlled group of corporations within the meaning of Section 414(b) of the Code, or that is under common control with the Company within the meaning of Section 414(c) of the Code; *provided, however*, that the phrase "at least 50 percent" shall be used in place of the phrase "at least 80 percent" each place it appears therein or in the regulations thereunder.

(b) Accrued Benefits. The term “Accrued Benefits” shall include the following amounts, payable as described herein: (i) all base salary for the time period ending with the Termination Date; (ii) reimbursement for any and all monies advanced in connection with the Executive’s employment for reasonable and necessary expenses incurred by the Executive on behalf of the Employer for the time period ending with the Termination Date; (iii) any and all other cash earned through the Termination Date and deferred at the election of the Executive or pursuant to any deferred compensation plan then in effect; (iv) notwithstanding any provision of any bonus or incentive compensation plan applicable to the Executive, but subject to any irrevocable deferral election then in effect, a lump sum amount, in cash, of any bonus or incentive compensation that has been allocated or awarded to the Executive for a fiscal year or other measuring period under the plan that ends prior to the Termination Date but has not yet been paid (pursuant to Section 5(f) or otherwise); and (v) all other payments and benefits to which the Executive (or in the event of the Executive’s death, the Executive’s surviving spouse or other beneficiary) may be entitled on the Termination Date as compensatory fringe benefits or under the terms of any benefit plan of the Employer, excluding severance payments under any Employer severance policy, practice or agreement in effect on the Termination Date. Payment of Accrued Benefits shall be made promptly in accordance with the Company’s prevailing practice with respect to clauses (i) and (ii) or, with respect to clauses (iii), (iv) and (v), pursuant to the terms of the benefit plan or practice establishing such benefits.

(c) Act. The term “Act” means the Securities Exchange Act of 1934, as amended.

(d) Affiliate and Associate. The terms “Affiliate” and “Associate” shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Act.

(e) Annual Cash Compensation. The term “Annual Cash Compensation” shall mean the sum of (i) the Executive’s Annual Base Salary (determined as of the time of the Change in Control of the Company or, if higher, immediately prior to the date the Notice of Termination is given) plus (ii) an amount equal to (A) if the Executive has been employed by the Company for at least 36 continuous months prior to the Change in Control of the Company, the highest annual incentive bonus the Executive earned with respect to any of the three fiscal years prior to the fiscal year in which the Change in Control of the Company occurs, or (B) if the Executive has not been employed by the Company for at least 36 continuous months prior to the Change in Control of the Company, the greater of (x) 60% of the Executive’s Annual Base Salary as of the time of the Change in Control of the Company or (y) the highest annual incentive bonus the Executive earned with respect to any of the two fiscal years prior to the fiscal year in which the Change in Control of the Company occurs.

(f) **Beneficial Owner.** A Person shall be deemed to be the “Beneficial Owner” of any securities:

(i) which such Person or any of such Person’s Affiliates or Associates has the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; *provided, however, that* a Person shall not be deemed the Beneficial Owner of, or to beneficially own, (A) securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person’s Affiliates or Associates until such tendered securities are accepted for purchase, or (B) securities issuable upon exercise of any rights issued pursuant to the terms of any shareholder rights agreement that the Company may adopt at any time before the issuance of such securities;

(ii) which such Person or any of such Person’s Affiliates or Associates, directly or indirectly, has the right to vote or dispose of or has “beneficial ownership” of (as determined pursuant to Rule 13d-3 of the General Rules and Regulations under the Act), including pursuant to any agreement, arrangement or understanding; *provided, however, that* a Person shall not be deemed the Beneficial Owner of, or to beneficially own, any security under this clause (ii) as a result of an agreement, arrangement or understanding to vote such security if the agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations under the Act and (B) is not also then reportable on a Schedule 13D under the Act (or any comparable or successor report); or

(iii) which are beneficially owned, directly or indirectly, by any other Person with which such Person or any of such Person’s Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy as described in clause (ii) above) or disposing of any voting securities of the Company.

(g) **Cause.** “Cause” for termination by the Employer of the Executive’s employment shall be limited to (i) the engaging by the Executive in intentional conduct not taken in good faith that the Company establishes, by clear and convincing evidence, has caused demonstrable and serious financial injury to the Employer, as evidenced by a determination in a binding and final judgment, order or decree of a court or administrative agency of competent jurisdiction, in effect after exhaustion or lapse of all rights of appeal, in an action, suit or proceeding, whether civil, criminal, administrative or investigative; (ii) conviction of a felony, as evidenced by binding and final judgment, order or decree of a court of competent jurisdiction, in effect after exhaustion of all rights of appeal, which substantially impairs the Executive’s ability to perform his duties or responsibilities; or (iii) continuing willful and unreasonable refusal by the Executive to perform the Executive’s duties or responsibilities, unless significantly changed without the Executive’s consent.

(h) Change in Control of the Company. A “Change in Control of the Company” shall be deemed to have occurred if an event set forth in any one of the following paragraphs shall have occurred:

(i) any Person (other than (A) the Company or any of its subsidiaries, (B) a trustee or other fiduciary holding securities under any employee benefit plan of the Company or any of its subsidiaries, (C) an underwriter temporarily holding securities pursuant to an offering of such securities or (D) a corporation owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of stock in the Company (“Excluded Persons”)) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates after the date of this Agreement, pursuant to express authorization by the Board that refers to this exception) representing 20% or more of either the then outstanding shares of common stock of the Company or the combined voting power of the Company’s then outstanding voting securities; or

(ii) the following individuals cease for any reason to constitute a majority of the number of directors of the Company then serving: (A) individuals who, on the date of this Agreement constituted the Board and (B) any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company) whose appointment or election by the Board or nomination for election by the Company’s shareholders was approved by a vote of at least two-thirds ($2/3$) of the directors then still in office who either were directors on the date of this Agreement, or whose appointment, election or nomination for election was previously so approved (collectively the “Continuing Directors”); *provided, however, that* individuals who are appointed to the Board pursuant to or in accordance with the terms of an agreement relating to a merger, consolidation, or share exchange involving the Company (or any direct or indirect subsidiary of the Company) shall not be Continuing Directors for purposes of this Agreement until after such individuals are first nominated for election by a vote of at least two-thirds ($2/3$) of the then Continuing Directors and are thereafter elected as directors by the shareholders of the Company at a meeting of shareholders held following consummation of such merger, consolidation, or share exchange; and, *provided further, that* in the event the failure of any such persons appointed to the Board to be Continuing Directors results in a Change in Control of the Company, the subsequent qualification of such persons as Continuing Directors shall not alter the fact that a Change in Control of the Company occurred; or

(iii) the shareholders of the Company approve a merger, consolidation or share exchange of the Company with any other corporation or approve the issuance of voting securities of the Company in connection with a merger, consolidation or share exchange of the Company (or any direct or indirect subsidiary of the Company) pursuant to applicable stock exchange requirements, other than (A) a merger, consolidation or share exchange which would result in the voting securities of the

Company outstanding immediately prior to such merger, consolidation or share exchange continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) at least 50% of the combined voting power of the voting securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger, consolidation or share exchange, or (B) a merger, consolidation or share exchange effected to implement a recapitalization of the Company (or similar transaction) in which no Person (other than an Excluded Person) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates after the date of this Agreement, pursuant to express authorization by the Board that refers to this exception) representing 20% or more of either the then outstanding shares of common stock of the Company or the combined voting power of the Company's then outstanding voting securities; or

(iv) the shareholders of the Company approve of a plan of complete liquidation or dissolution of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets (in one transaction or a series of related transactions within any period of 24 consecutive months), other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity at least 75% of the combined voting power of the voting securities of which are owned by Persons in substantially the same proportions as their ownership of the Company immediately prior to such sale.

Notwithstanding the foregoing, no "Change in Control of the Company" shall be deemed to have occurred if there is consummated any transaction or series of integrated transactions immediately following which the record holders of the common stock of the Company immediately prior to such transaction or series of transactions continue to own, directly or indirectly, in the same proportions as their ownership in the Company, an entity that owns all or substantially all of the assets or voting securities of the Company immediately following such transaction or series of transactions.

(i) Code. The term "Code" means the Internal Revenue Code of 1986, including any amendments thereto or successor tax codes thereof. Any reference to a particular provision of the Code shall be deemed to include reference to any successor provision thereto.

(j) Covered Termination. Subject to Section 2(b), the term "Covered Termination" means any Termination of Employment during the Employment Period where the Termination Date, or the date Notice of Termination is delivered, is any date prior to the end of the Employment Period.

(k) Employment Period. Subject to Section 2(b), the term "Employment Period" means a period commencing on the date of a Change in Control of the Company, and ending at 11:59 p.m. Central Time on the third anniversary of such date.

(l) Good Reason. The Executive shall have "Good Reason" for termination of employment in the event of:

(i) any breach of this Agreement by the Employer, including specifically any breach by the Employer of the agreements contained in Section 3(b), Section 4, Section 5, or Section 6, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith that the Employer remedies promptly after receipt of notice thereof given by the Executive;

(ii) any reduction in the Executive's base salary, percentage of base salary available as incentive compensation or bonus opportunity or benefits, in each case relative to those most favorable to the Executive in effect at any time during the 180-day period prior to the Change in Control of the Company or, to the extent more favorable to the Executive, those in effect at any time during the Employment Period;

(iii) the removal of the Executive from, or any failure to reelect or reappoint the Executive to, any of the positions held with the Employer on the date of the Change in Control of the Company or any other positions with the Employer to which the Executive shall thereafter be elected, appointed or assigned, except in the event that such removal or failure to reelect or reappoint relates to the termination by the Employer of the Executive's employment for Cause or by reason of disability pursuant to Section 12;

(iv) a good faith determination by the Executive that there has been a material adverse change, without the Executive's written consent, in the Executive's working conditions or status with the Employer relative to the most favorable working conditions or status in effect during the 180-day period prior to the Change in Control of the Company, or, to the extent more favorable to the Executive, those in effect at any time during the Employment Period, including but not limited to (A) a significant change in the nature or scope of the Executive's authority, powers, functions, duties or responsibilities, or (B) a significant reduction in the level of support services, staff, secretarial and other assistance, office space and accoutrements, but in each case excluding for this purpose an isolated, insubstantial and inadvertent event not occurring in bad faith that the Employer remedies within ten (10) days after receipt of notice thereof given by the Executive;

(v) the relocation of the Executive's principal place of employment to a location more than 35 miles from the Executive's principal place of employment on the date 180 days prior to the Change in Control of the Company;

(vi) the Employer requires the Executive to travel on Employer business 20% in excess of the average number of days per month the Executive was required to travel during the 180-day period prior to the Change in Control of the Company;

(vii) failure by the Company to obtain the Agreement referred to in Section 17(a) as provided therein; or

(viii) any voluntary termination of employment by the Executive where the Notice of Termination is delivered during the six (6) months following the first six (6) months after the Change in Control of the Company.

(m) Person. The term "Person" shall mean any individual, firm, partnership, corporation or other entity, including any successor (by merger or otherwise) of such entity, or a group of any of the foregoing acting in concert.

(n) Prorated Bonus. The term "Prorated Bonus" shall mean an amount equal to the sum of the following with respect to each contingent bonus or incentive compensation award made to the Executive for all uncompleted periods as of the Termination Date: (i) the value of such award, calculated as if the goals with respect to such award had been attained (at the target level, if applicable), multiplied by a fraction, the numerator of which is the number of days that have elapsed from the first day of the period to which the award relates to the Termination Date and the denominator of which is the total number of days in the period to which the award relates (without regard to the Termination Date), reduced by (ii) any amounts previously paid with respect to such award or that will be paid (without regard to this Agreement).

(o) Retirement. The term "Retirement" means the cessation of service as an employee of the Company and its Affiliates for any reason other than death, disability (as provided in Section 12), or termination for Cause, if at the time of such cessation of service either (1) the Executive is age 60 and his age plus years of service for the Company and its Affiliates is equal to or greater than 70, or (2) the Executive is age 65 or older.

(p) Separation from Service. For purposes of this Agreement, the term "Separation from Service" means the Executive's Termination of Employment, or if the Executive continues to provide services following his or her Termination of Employment, such later date as is considered a separation from service from the Company and its 409A Affiliates within the meaning of Code Section 409A. Specifically, if the Executive continues to provide services to the Company or a 409A Affiliate in a capacity other than as an employee, such shift in status is not automatically a Separation from Service.

(q) Termination of Employment. For purposes of this Agreement, the Executive's "Termination of Employment" shall be presumed to occur when the Company and the Executive reasonably anticipate that no further services will be performed by the Executive for the Company and its 409A Affiliates or that the level of bona fide services the Executive will perform as an employee of the Company and its 409A Affiliates will permanently decrease to no more than 20% of the average level of bona fide services performed by the Executive (whether as an employee or independent contractor) for the Company and its 409A Affiliates over the immediately preceding 36-month period (or such lesser period of services). Whether the Executive has experienced a Termination of Employment shall be determined by the Employer in good faith and consistent with Section 409A of the Code. Notwithstanding the foregoing, if the Executive takes a leave of absence for purposes of military leave, sick leave or other bona fide reason, the Executive will not be deemed to have experienced a Termination of Employment for the first six (6) months of the leave of absence, or if longer, for so long as the Executive's right to reemployment is provided either by statute or by contract, including this Agreement; *provided that* if the leave of absence is due to a medically determinable physical or mental impairment that can be expected to result in death or last for a continuous period of not less than six (6) months, where such impairment causes the Executive to be unable to perform the duties of his or her position of employment or any substantially similar position of employment, the leave may be extended by the Employer for up to 29 months without causing a Termination of Employment.

(r) Termination Date. Except as otherwise provided in Section 2(b), Section 10(b), and Section 17(a), the term “Termination Date” means (i) if the Executive’s Termination of Employment is by the Executive’s death, the date of death; (ii) if the Executive’s Termination of Employment is by reason of Retirement, the date of such retirement; (iii) if the Executive’s Termination of Employment is by reason of disability pursuant to Section 12, the earlier of 30 days after the Notice of Termination is given or one day prior to the end of the Employment Period; (iv) if the Executive’s Termination of Employment is by the Executive voluntarily (other than for Good Reason), the date the Notice of Termination is given; and (v) if the Executive’s Termination of Employment is by the Employer (other than by reason of disability pursuant to Section 12) or by the Executive for Good Reason, the earlier of 30 days after the Notice of Termination is given or one day prior to the end of the Employment Period. Notwithstanding the foregoing,

(A) If termination is for Cause pursuant to Section 1(g)(iii) and if the Executive has cured the conduct constituting such Cause as described by the Employer in its Notice of Termination within such 30-day or shorter period, then the Executive’s employment hereunder shall continue as if the Employer had not delivered its Notice of Termination.

(B) If the Executive shall in good faith give a Notice of Termination for Good Reason and the Employer notifies the Executive that a dispute exists concerning the termination within the 15-day period following receipt thereof, then the Executive may elect to continue his or her employment during such dispute and the Termination Date shall be determined under this paragraph. If the Executive so elects and it is thereafter determined that Good Reason did exist, the Termination Date shall be the earliest of (1) the date on which the dispute is finally determined, either (x) by mutual written agreement of the parties or (y) in accordance with Section 22, (2) the date of the Executive’s death or (3) one day prior to the end of the Employment Period. If the Executive so elects and it is thereafter determined that Good Reason did not exist, then the employment of the Executive hereunder shall continue after such determination as if the Executive had not delivered the Notice of Termination asserting Good Reason and there shall be no Termination Date arising out of such Notice. In either case, this Agreement continues, until the Termination Date, if any, as if the Executive had not delivered the Notice of Termination except that, if it is finally determined that Good Reason did exist, the Executive shall in no case be denied the benefits described in Section 9 (including a Termination Payment) based on events occurring after the Executive delivered his Notice of Termination.

(C) Except as provided in Section 1(q)(B), if the party receiving the Notice of Termination notifies the other party that a dispute exists concerning the termination within the appropriate period following receipt thereof and it is finally determined that the reason asserted in such Notice of Termination did not exist, then (1) if such Notice was delivered by the Executive, the Executive will be deemed to have voluntarily terminated his employment and the Termination Date shall

be the earlier of the date 15 days after the Notice of Termination is given or one day prior to the end of the Employment Period and (2) if delivered by the Company, the Company will be deemed to have terminated the Executive other than by reason of death, disability or Cause.

2. Termination or Cancellation Prior to Change in Control.

(a) Subject to Section 2(b), the Employer and the Executive shall each retain the right to terminate the employment of the Executive at any time prior to a Change in Control of the Company. Subject to Section 2(b), in the event the Executive's employment is terminated prior to a Change in Control of the Company, this Agreement shall be terminated and cancelled and of no further force and effect, and any and all rights and obligations of the parties hereunder shall cease.

(b) Anything in this Agreement to the contrary notwithstanding, if a Change in Control of the Company occurs and if the Executive's employment is terminated (other than a termination due to the Executive's death or as a result of the Executive's disability) during the period of 180 days prior to the date on which the Change in Control of the Company occurs, and if it is reasonably demonstrated by the Executive that such termination of employment (i) was at the request of a third party who has taken steps reasonably calculated to effect a Change in Control of the Company or (ii) otherwise arose in connection with or in anticipation of a Change in Control of the Company, then for all purposes of this Agreement such termination of employment shall be deemed a "Covered Termination," "Notice of Termination" shall be deemed to have been given, and the "Employment Period" shall be deemed to have begun on the date of such termination which shall be deemed to be the "Termination Date" and the date of the Change in Control of the Company for purposes of this Agreement.

3. Employment Period; Vesting of Certain Benefits

(a) If a Change in Control of the Company occurs when the Executive is employed by the Employer, the Employer will continue thereafter to employ the Executive during the Employment Period, and the Executive will remain in the employ of the Employer in accordance with and subject to the terms and provisions of this Agreement. Any Termination of Employment during the Employment Period, whether by the Company or the Employer, shall be deemed a termination by the Company for purposes of this Agreement.

(b) If a Change in Control of the Company occurs when the Executive is employed by the Employer, (i) the Company shall cause all restrictions on restricted stock awards made to the Executive prior to the Change in Control of the Company to lapse such that the Executive is fully and immediately vested in the Executive's restricted stock upon such a Change in Control of the Company; and (ii) the Company shall cause all stock options granted to the Executive prior to the Change in Control of the Company pursuant to the Company's stock option plan(s) to be fully and immediately vested upon such a Change in Control of the Company.

4. Duties. During the Employment Period, the Executive shall, in the same capacities and positions held by the Executive at the time of the Change in Control of the Company or in such other capacities and positions as may be agreed to by the Employer and the Executive in writing, devote the Executive's best efforts and all of the Executive's business time, attention and skill to the business and affairs of the Employer, as such business and affairs now exist and as they may hereafter be conducted; *provided, however, that* the Executive shall be entitled (a) to serve as director of other corporations and (b) to devote time to personal and financial activities, in each case so long as such activities do not materially affect the Executive's ability to perform the Executive's duties hereunder.

5. Compensation. During the Employment Period, the Executive shall be compensated as follows:

(a) The Executive shall receive, at reasonable intervals (but not less often than monthly) and in accordance with such standard policies as may be in effect immediately prior to the Change in Control of the Company, an annual base salary in cash equivalent of not less than twelve times the Executive's highest monthly base salary for the twelve-month period immediately preceding the month in which the Change in Control of the Company occurs or, if higher, an annual base salary at the rate in effect immediately prior to the Change in Control of the Company (which base salary shall, unless otherwise agreed in writing by the Executive and subject to any irrevocable deferral election then in effect, include the current receipt by the Executive of any amounts which, prior to the Change in Control of the Company, the Executive had elected to defer, whether such compensation is deferred under Section 401(k) of the Code or otherwise), subject to adjustment as hereinafter provided in Section 6 (such salary amount as adjusted upward from time to time is hereafter referred to as the "Annual Base Salary").

(b) The Executive shall receive fringe benefits at least equal in value to the highest value of such benefits provided for the Executive at any time during the 180-day period immediately prior to the Change in Control of the Company or, if more favorable to the Executive, those provided generally at any time during the Employment Period to any executives of the Employer of comparable status and position to the Executive; and shall be reimbursed, at such intervals and in accordance with such standard policies that are most favorable to the Executive that were in effect at any time during the 180-day period immediately prior to the Change in Control of the Company, for any and all monies advanced in connection with the Executive's employment for reasonable and necessary expenses incurred by the Executive on behalf of the Employer, including travel expenses.

(c) The Executive and/or the Executive's family, as the case may be, shall be included, to the extent eligible thereunder (which eligibility shall not be conditioned on the Executive's salary grade or on any other requirement which excludes persons of comparable status to the Executive unless such exclusion was in effect for such plan or an equivalent plan at any time during the 180-day period immediately prior to the Change in Control of the Company), in any and all plans providing benefits for the Employer's salaried employees in general, including but not limited to group life insurance, hospitalization, medical, dental, profit sharing and stock bonus plans; *provided, that, (i)* in no event shall the aggregate level of benefits under such plans in which the Executive is included be less than the aggregate level of benefits under plans of the Employer of the type referred to in this Section 5(c) in which the Executive was participating at any time during the 180-day period immediately prior to the Change in Control of the Company

and (ii) in no event shall the aggregate level of benefits under such plans be less than the aggregate level of benefits under plans of the type referred to in this Section 5(c) provided at any time after the Change in Control of the Company to any executive of the Employer of comparable status and position to the Executive.

(d) The Executive shall annually be entitled to not less than the amount of paid vacation and not fewer than the highest number of paid holidays to which the Executive was entitled annually at any time during the 180-day period immediately prior to the Change in Control of the Company or such greater amount of paid vacation and number of paid holidays as may be made available annually to other executives of the Employer of comparable status and position to the Executive at any time during the Employment Period.

(e) The Executive shall be included in all plans providing additional benefits to executives of the Employer of comparable status and position to the Executive, including but not limited to deferred compensation, split-dollar life insurance, supplemental retirement, stock option, stock appreciation, stock bonus and similar or comparable plans; *provided, that*, (i) in no event shall the aggregate level of benefits under such plans be less than the highest aggregate level of benefits under plans of the Employer of the type referred to in this Section 5(c) in which the Executive was participating at any time during the 180-day period immediately prior to the Change in Control of the Company; (ii) in no event shall the aggregate level of benefits under such plans be less than the aggregate levels of benefits under plans of the type referred to in this Section 5(e) provided at any time after the Change in Control of the Company to any executive of the Employer comparable in status and position to the Executive; and (iii) the Employer's obligation to include the Executive in bonus or incentive compensation plans shall be determined by Section 5(f).

(f) To assure that the Executive will have an opportunity to earn incentive compensation after a Change in Control of the Company, the Executive shall be included in a bonus plan of the Employer which shall satisfy the standards described below (such plan, the "Bonus Plan"). Bonuses under the Bonus Plan shall be payable with respect to achieving such financial or other goals reasonably related to the business of the Employer as the Employer shall establish (the "Goals"), all of which Goals shall be attainable, prior to the end of the Employment Period, with approximately the same degree of probability as the most attainable goals under the Employer's bonus plan or plans as in effect at any time during the 180-day period immediately prior to the Change in Control of the Company (whether one or more, the "Company Bonus Plan") and in view of the Employer's existing and projected financial and business circumstances applicable at the time. The amount of the bonus (the "Bonus Amount") that the Executive is eligible to earn under the Bonus Plan shall be no less than the amount of the Executive's maximum award provided in such Company Bonus Plan (such bonus amount herein referred to as the "Targeted Bonus"), and in the event the Goals are not achieved such that the entire Targeted Bonus is not payable, the Bonus Plan shall provide for a payment of a Bonus Amount equal to a portion of the Targeted Bonus reasonably related to that portion of the Goals which were achieved. Payment of the Bonus Amount shall not be affected by any circumstance occurring subsequent to the end of the Employment Period, including the Executive's Termination of Employment.

6. Annual Compensation Adjustments. During the Employment Period, the Board of Directors of the Company (or an appropriate committee thereof) will consider and appraise, at least annually, the contributions of the Executive to the Company, and in accordance with the Company's practice prior to the Change in Control of the Company, due consideration shall be given to the upward adjustment of the Executive's Annual Base Salary, at least annually, (a) commensurate with increases generally given to other executives of the Company of comparable status and position to the Executive, and (b) as the scope of the Company's operations or the Executive's duties expand.

7. Termination For Cause or Without Good Reason. If there is a Covered Termination for Cause or due to the Executive's voluntarily terminating his employment other than for Good Reason (any such terminations to be subject to the procedures set forth in Section 13), then the Executive shall be entitled to receive only Accrued Benefits.

8. Termination Giving Rise to a Termination Payment If there is a Covered Termination by the Executive for Good Reason, or by the Company other than by reason of (i) death, (ii) disability pursuant to Section 12, or (iii) Cause (any such terminations to be subject to the procedures set forth in Section 13), then the Executive shall be entitled to receive, and the Company shall promptly pay, Accrued Benefits and, in lieu of further base salary for periods following the Termination Date, as liquidated damages and additional severance pay and in consideration of the covenant of the Executive set forth in Section 14(a), the Termination Payment and the Prorated Bonus.

9. Payments Upon Termination.

(a) Termination Payment

(i) Subject to Section 9(a)(iii), the "Termination Payment" shall be an amount equal to the Annual Cash Compensation times two (2).

(ii) The Termination Payment and the Prorated Bonus shall be paid to the Executive in cash equivalent on the first day of the seventh month following the month in which the Executive's Separation from Service occurs, without interest thereon; *provided that*, if on the date of the Executive's Separation from Service, neither the Company nor any other entity that is considered a "service recipient" with respect to the Executive within the meaning of Code Section 409A has any stock which is publicly traded on an established securities market (within the meaning of Treasury Regulation Section 1.897-1(m)) or otherwise, then the Termination Payment and the Prorated Bonus shall be paid to the Executive in cash equivalent within ten (10) business days after the Termination Date, or if the Executive's Termination Date is pursuant to Section 2(b), within ten (10) business days after the date of the Change in Control of the Company (as defined without reference to Section 2(b)). Such lump sum payment shall not be reduced by any present value or similar factor, and the Executive shall not be required to mitigate the amount of the Termination Payment and Prorated Bonus by securing other employment or otherwise, nor will such Termination Payment and Prorated Bonus be reduced by reason of the Executive securing other employment or for any other reason. The Termination Payment and Prorated Bonus shall be in lieu of, and acceptance by the Executive of the

Termination Payment and Prorated Bonus shall constitute the Executive's release of any rights of the Executive to, any other cash severance payments under any Company severance policy, practice or agreement.

(iii) Subject to Section 26 of this Agreement, notwithstanding any other provision of this Agreement, if any portion of the Termination Payment or any other payment under this Agreement, or under any other agreement with or plan of the Employer (in the aggregate, "Total Payments"), would constitute an "excess parachute payment," then the Executive shall have the option to have the Total Payments to be made to the Executive reduced such that the value of the aggregate Total Payments that the Executive is entitled to receive shall be One Dollar (\$1) less than the maximum amount which the Executive may receive without becoming subject to the tax imposed under Section 4999 of the Code. For purposes of this Agreement, the terms "excess parachute payment" and "parachute payments" shall have the meanings assigned to them in Section 280G of the Code and such "parachute payments" shall be valued as provided therein. Present value for purposes of this Agreement shall be calculated in accordance with Section 1274(b)(2) of the Code. Within 40 days following a Covered Termination or notice by one party to the other of its belief that there is a payment or benefit due the Executive that will result in an "excess parachute payment" as defined in Section 280G of the Code, the Executive and the Company, at the Company's expense, shall obtain the opinion (which need not be unqualified) of nationally recognized tax counsel ("National Tax Counsel") selected by the Company's independent auditors and reasonably acceptable to the Executive (which may be regular outside counsel to the Company), which opinion sets forth (A) the amount of the Base Period Income, (B) the amount and present value of Total Payments, (C) the amount and present value of any excess parachute payments determined without regard to any reduction of Total Payments pursuant to this Section 9(a)(ii) and (D) the net after-tax proceeds to the Executive, taking into account the tax imposed under Section 4999 of the Code if (x) the Total Payments were reduced in accordance with the first sentence of this Section 9(a)(iii) or (y) the Total Payments were not so reduced. As used in this Agreement, the term "Base Period Income" means an amount equal to the Executive's "annualized includable compensation for the base period" as defined in Section 280G(d)(1) of the Code. For purposes of such opinion, the value of any noncash benefits or any deferred payment or benefit shall be determined by the Company's independent auditors in accordance with the principles of Section 280G(d)(3) and (4) of the Code, which determination shall be evidenced in a certificate of such auditors addressed to the Company and the Executive. The opinion of National Tax Counsel shall be addressed to the Company and the Executive and shall be binding upon the Company and the Executive. If such National Tax Counsel opinion determines that there would be an excess parachute payment, then, at the Executive's sole discretion, the Termination Payment hereunder or any other payment or benefit determined by such counsel to be includable in Total Payments may be reduced or eliminated as specified by the Executive in writing delivered to the Company within thirty days of his receipt of such opinion so that under the bases of calculations set forth in such opinion there will be no excess parachute payment. If such National Tax Counsel so requests in connection with the opinion required by this Section 9(a), the Executive and the Company shall obtain, at the Company's expense, and the National Tax Counsel may rely on, the advice of a firm of recognized executive compensation consultants as to the reasonableness of any item of compensation to be received by the Executive solely with respect to its status under Section 280G of the Code and the regulations thereunder.

(iv) The Company agrees to bear all costs associated with, and to indemnify and hold harmless, the National Tax Counsel of and from any and all claims, damages, and expenses resulting from or relating to its determinations pursuant to this Section 9(a), except for claims, damages or expenses resulting from the gross negligence or willful misconduct of such firm.

(b) Additional Benefits. If there is a Covered Termination and the Executive is entitled to Accrued Benefits, the Termination Payment and the Prorated Bonus, then the Company shall provide to the Executive the following additional benefits:

(i) The Executive shall receive, until the end of the second calendar year following the calendar year in which the Executive's Separation from Service occurs, at the expense of the Company, outplacement services, on an individualized basis at a level of service commensurate with the Executive's status with the Company immediately prior to the date of the Change in Control of the Company (or, if higher, immediately prior to the Executive's Termination of Employment), provided by a nationally recognized executive placement firm selected by the Company; *provided that* the cost to the Company of such services shall not exceed 10% of the Executive's Annual Base Salary.

(ii) Until the earlier of the end of the Employment Period or such time as the Executive has obtained new employment and is covered by benefits which in the aggregate are at least equal in value to the following benefits:

(A) The Executive shall continue to be covered, at the expense of the Company, by the same or equivalent hospitalization, medical and dental coverage as was required hereunder with respect to the Executive immediately prior to the date the Notice of Termination is given. If, following the end of the COBRA continuation period, such hospitalization, medical or dental coverage is provided under a health plan that is subject to Section 105(h) of the Code, then benefits payable under such health plan shall comply with the requirements of Treasury regulation section 1.409A-3(i)(1)(iv) and, if necessary, the Company shall amend such health plan to comply therewith. If, following the end of the COBRA continuation period, the Company's health plan does not permit continued coverage by Executive and his covered dependents, then the Company may satisfy its obligations hereunder by purchasing an individual insurance policy on Executive's and his covered dependents' behalf or enrolling Executive and his covered dependents in a state-sponsored high risk health pool if individual insurance is not able to be obtained, all at the Company's expense.

(B) If the Executive elects to convert his group life insurance to an individual policy, then the Company shall pay the Executive's premiums for such conversion policies. Notwithstanding the foregoing, if the Executive's Termination Payment is delayed for six (6) months following his Separation from Service, then during the first six (6) months following

the Executive's Separation from Service, the Executive shall pay the conversion premiums and after the end of such six (6) month period, the Company shall make a cash equivalent payment to the Executive equal to the aggregate premiums paid by the Executive for such coverage, without interest thereon.

If the Executive is entitled to the Termination Payment pursuant to Section 2(b), then within ten (10) days following the Change in Control of the Company (determined without regard to Section 2(b)), the Company shall reimburse the Executive for any COBRA premiums the Executive paid for his hospitalization, medical and dental coverage under COBRA from the Executive's Termination Date through the date of the Change in Control of the Company (determined without regard to Section 2(b)).

(iii) The Company shall reimburse the Executive for up to \$15,000 in the aggregate of fees and expenses of consultants and/or legal or accounting advisors engaged by the Executive to advise the Executive as to matters relating to the computation of benefits due and payable under this Section 9.

10. Death.

(a) Except as provided in Section 10(b), in the event of a Covered Termination due to the Executive's death, the Executive's estate, heirs and beneficiaries shall receive all the Executive's Accrued Benefits through the Termination Date and, no later than 90 days after the Executive's death, the Prorated Bonus.

(b) In the event the Executive dies after a Notice of Termination is given (i) by the Company or (ii) by the Executive for Good Reason, the Executive's estate, heirs and beneficiaries shall be entitled to the benefits described in Section 10(a) and, subject to the provisions of this Agreement, to such Termination Payment as the Executive would have been entitled to had the Executive lived, except that the Termination Payment shall be paid within 90 days following the date of the Executive's death. For purposes of this Section 10(b), the Termination Date shall be the earlier of 30 days following the giving of the Notice of Termination, subject to extension pursuant to Section 1(m), or one day prior to the end of the Employment Period.

11. Retirement. If, during the Employment Period, the Executive and the Employer shall execute an agreement providing for the early retirement of the Executive from the Employer, or the Executive shall otherwise give notice that he is voluntarily choosing to retire early from the Employer, the Executive shall receive Accrued Benefits through the Termination Date; *provided that* if the Executive's employment is terminated by the Executive for Good Reason or by the Company other than by reason of death, disability or Cause and the Executive also, in connection with such termination, elects voluntary early retirement, then the Executive shall also be entitled to receive a Termination Payment and the Prorated Bonus pursuant to Section 8.

12. Termination for Disability. If, during the Employment Period, as a result of the Executive's disability due to physical or mental illness or injury (regardless of whether such illness or injury is job-related), the Executive shall have been absent from the

Executive's duties hereunder on a full-time basis for a period of six (6) consecutive months and, within 30 days after the Company notifies the Executive in writing that it intends to terminate the Executive's employment (which notice shall not constitute the Notice of Termination contemplated below), the Executive shall not have returned to the performance of the Executive's duties hereunder on a full-time basis, the Company may terminate the Executive's employment for purposes of this Agreement pursuant to a Notice of Termination given in accordance with Section 13. If the Executive's employment is terminated on account of the Executive's disability in accordance with this Section, the Executive shall receive Accrued Benefits through the Termination Date and, no later than 90 days after the Executive's Separation from Service, the Prorated Bonus, and shall remain eligible for all benefits provided by any long term disability programs of the Employer in effect at the time of such termination.

13. Termination Notice and Procedure. Any Covered Termination by the Company or the Executive (other than a termination of the Executive's employment that is a Covered Termination by virtue of Section 2(b)) shall be communicated by a written notice of termination ("Notice of Termination") to the Executive, if such Notice is given by the Company, and to the Company, if such Notice is given by the Executive, all in accordance with the following procedures and those set forth in Section 24:

(a) If such termination is for disability, Cause or Good Reason, the Notice of Termination shall indicate in reasonable detail the facts and circumstances alleged to provide a basis for such termination.

(b) Any Notice of Termination by the Company shall have been approved, prior to the giving thereof to the Executive, by a resolution duly adopted by a majority of the directors of the Company (or any successor corporation) then in office.

(c) If the Notice is given by the Executive for Good Reason, the Executive may cease performing his duties hereunder on or after the date 15 days after the delivery of Notice of Termination and shall in any event cease employment on the Termination Date. If the Notice is given by the Company, then the Executive may cease performing his duties hereunder on the date of receipt of the Notice of Termination, subject to the Executive's rights hereunder.

(d) The Executive shall have 30 days, or such longer period as the Company may determine to be appropriate, to cure any conduct or act, if curable, alleged to provide grounds for termination of the Executive's employment for Cause under this Agreement pursuant to Section 1(g)(iii).

(e) The recipient of any Notice of Termination shall personally deliver or mail in accordance with Section 24 written notice of any dispute relating to such Notice of Termination to the party giving such Notice within 15 days after receipt thereof; *provided, however, that* if the Executive's conduct or act alleged to provide grounds for termination by the Company for Cause is curable, then such period shall be 30 days. After the expiration of such period, the contents of the Notice of Termination shall become final and not subject to dispute.

14. Further Obligations of the Executive.

(a) Competition. The Executive agrees that, in the event of any Covered Termination where the Executive is entitled to Accrued Benefits and the Termination Payment, the Executive shall not, for a period expiring six (6) months after the Termination Date, without the prior written approval of the Company's Board of Directors, participate in the management of, be employed by or own any business enterprise at a location within the United States that engages in substantial competition with the Company or its subsidiaries, where such enterprise's revenues from any competitive activities amount to 10% or more of such enterprise's net revenues and sales for its most recently completed fiscal year; *provided, however, that* nothing in this Section 14(a) shall prohibit the Executive from owning stock or other securities of a competitor amounting to less than five percent of the outstanding capital stock of such competitor.

(b) Confidentiality. During and following the Executive's employment by the Company, the Executive shall hold in confidence and not directly or indirectly disclose or use or copy or make lists of any confidential information or proprietary data of the Company (including that of the Employer), except to the extent authorized in writing by the Board of Directors of the Company or required by any court or administrative agency, other than to an employee of the Company or a person to whom disclosure is reasonably necessary or appropriate in connection with the performance by the Executive of duties as an executive of the Company. Confidential information shall not include any information known generally to the public or any information of a type not otherwise considered confidential by persons engaged in the same business or a business similar to that of the Company. All records, files, documents and materials, or copies thereof, relating to the business of the Company which the Executive shall prepare, or use, or come into contact with, shall be and remain the sole property of the Company and shall be promptly returned to the Company upon termination of employment with the Company.

(c) No Solicitation. The Executive agrees that, in the event of any Covered Termination where the Executive is entitled to Accrued Benefits, the Termination Payment and the Prorated Bonus, the Executive shall not, for a period expiring two years after the Termination Date, without the prior written approval of the Company's Board of Directors, hire or solicit for employment any person who is or was employed by the Company during the then immediately preceding 12 months, other than pursuant to a general published solicitation of employment.

15. Expenses and Interest. If, after a Change in Control of the Company, (a) a dispute arises with respect to the enforcement of the Executive's rights under this Agreement or (b) any legal or arbitration proceeding shall be brought to enforce or interpret any provision contained herein or to recover damages for breach hereof, in either case so long as the Executive is not acting in bad faith, then the Company shall reimburse the Executive for any reasonable attorneys' fees and necessary costs and disbursements incurred as a result of the dispute, legal or arbitration proceeding ("Expenses"), and prejudgment interest on any money judgment or arbitration award obtained by the Executive calculated at the rate of interest announced by The Bank of New York, from time to time at its prime or base lending rate from the date that payments to him or her should have been made under this Agreement. Within ten (10) days after the Executive's written request therefor (but in no event later than the end of the calendar year following the calendar year in which such Expense is incurred), the Company shall reimburse the Executive, or such other person or entity as the Executive may designate in writing to the Company, the Executive's reasonable Expenses.

16. Payment Obligations Absolute. The Company's obligation during and after the Employment Period to pay the Executive the amounts and to make the benefit and other arrangements provided herein shall be absolute and unconditional and shall not be affected by any circumstances, including, without limitation, any setoff, counterclaim, recoupment, defense or other right which the Company may have against him or anyone else. Except as provided in Section 15, all amounts payable by the Company hereunder shall be paid without notice or demand. Each and every payment made hereunder by the Company shall be final, and the Company will not seek to recover all or any part of such payment from the Executive, or from whomsoever may be entitled thereto, for any reason whatsoever.

17. Successors.

(a) If the Company sells, assigns or transfers all or substantially all of its business and assets to any Person or if the Company merges into or consolidates or otherwise combines (where the Company does not survive such combination) with any Person (any such event, a "Sale of Business"), then the Company shall assign all of its right, title and interest in this Agreement as of the date of such event to such Person, and the Company shall cause such Person, by written agreement in form and substance reasonably satisfactory to the Executive, to expressly assume and agree to perform from and after the date of such assignment all of the terms, conditions and provisions imposed by this Agreement upon the Company. Failure of the Company to obtain such agreement prior to the effective date of such Sale of Business shall be a breach of this Agreement constituting "Good Reason" hereunder, except that for purposes of implementing the foregoing the date upon which such Sale of Business becomes effective shall be deemed the Termination Date. In case of such assignment by the Company and of assumption and agreement by such Person, as used in this Agreement, "Company" shall thereafter mean such Person which executes and delivers the agreement provided for in this Section 17 or which otherwise becomes bound by all the terms and provisions of this Agreement by operation of law, and this Agreement shall inure to the benefit of, and be enforceable by, such Person. The Executive shall, in his or her discretion, be entitled to proceed against any or all of such Persons, any Person which theretofore was such a successor to the Company and the Company (as so defined) in any action to enforce any rights of the Executive hereunder. Except as provided in this Section 17(a), this Agreement shall not be assignable by the Company. This Agreement shall not be terminated by the voluntary or involuntary dissolution of the Company.

(b) This Agreement and all rights of the Executive shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, heirs and beneficiaries. All amounts payable to the Executive under Sections 7, 8, 9, 10, 11, 12 and 15 if the Executive had lived shall be paid, in the event of the Executive's death, to the Executive's estate, heirs and representatives; *provided, however, that* the foregoing shall not be construed to modify any terms of any benefit plan of the Employer, as such terms are in effect on the date of the Change in Control of the Company, that expressly govern benefits under such plan in the event of the Executive's death.

18. Severability. The provisions of this Agreement shall be regarded as divisible, and if any of said provisions or any part hereof are declared invalid or unenforceable by a court of competent jurisdiction, the validity and enforceability of the remainder of such provisions or parts hereof and the applicability thereof shall not be affected thereby.

19. Contents of Agreement; Waiver of Rights; Amendment. This Agreement sets forth the entire understanding between the parties hereto with respect to the subject matter hereof, and the Executive hereby waives all rights under, any prior or other agreement or understanding between the parties with respect to such subject matter. This Agreement may not be amended or modified at any time except by written instrument executed by the Company and the Executive.

20. Withholding. The Company shall be entitled to withhold from amounts to be paid to the Executive hereunder any federal, state or local withholding or other taxes or charges which it is from time to time required to withhold; *provided that* the amount so withheld shall not exceed the minimum amount required to be withheld by law unless otherwise elected by the Executive in writing. In addition, if prior to the date of payment of the Termination Payment or Prorated Bonus hereunder, the Federal Insurance Contributions Act (FICA) tax imposed under Sections 3101, 3121(a) and 3121(v)(2) of the Code, where applicable, becomes due with respect to any payment or benefit to be provided hereunder, the Company may provide for an immediate payment of the amount needed to pay the Executive's portion of such tax (plus an amount equal to the taxes that will be due on such amount) and the Executive's Termination Payment or Prorated Bonus shall be reduced accordingly. The Company shall be entitled to rely on an opinion of the National Tax Counsel if any question as to the amount or requirement of any such withholding shall arise.

21. Certain Rules of Construction. No party shall be considered as being responsible for the drafting of this Agreement for the purpose of applying any rule construing ambiguities against the drafter or otherwise. No draft of this Agreement shall be taken into account in construing this Agreement. Any provision of this Agreement which requires an agreement in writing shall be deemed to require that the writing in question be signed by the Executive and an authorized representative of the Company.

22. Governing Law; Resolution of Disputes. This Agreement and the rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Wisconsin, without reference to conflict of law principles thereof. Any dispute arising out of this Agreement shall, at the Executive's election, be determined by arbitration under the rules of the American Arbitration Association then in effect (in which case both parties shall be bound by the arbitration award) or by litigation. Whether the dispute is to be settled by arbitration or litigation, the venue for the arbitration or litigation shall be Milwaukee, Wisconsin or, at the Executive's election, if the Executive is not then residing or working in the Milwaukee, Wisconsin metropolitan area, in the judicial district encompassing the city in which the Executive resides; *provided, that*, if the Executive is not then residing in the United States, the election of the Executive with respect to such venue shall be either Milwaukee, Wisconsin or in the judicial district encompassing that city in the United States among the thirty cities having the largest population (as determined by the most recent United States Census data available at the Termination Date) which is closest to the Executive's residence. The parties consent to personal jurisdiction in each trial court in the selected venue having subject matter jurisdiction notwithstanding their residence or situs, and each party irrevocably consents to service of process in the manner provided hereunder for the giving of notices.

23. Additional Section 409A Provisions.

(a) If, after the date of a Change in Control of the Company, any payment amount or the value of any benefit under this Agreement is required to be included in the Executive's income prior to the date such amount is actually paid or the benefit provided as a result of the failure of this Agreement (or any other arrangement that is required to be aggregated with this Agreement under Code Section 409A) to comply with Code Section 409A, then the Executive shall receive a distribution, in a lump sum, within 90 days after the date it is finally determined that the Agreement (or such other arrangement that is required to be aggregated with this Agreement) fails to meet the requirements of Section 409A of the Code; such distribution shall equal the amount required to be included in the Executive's income as a result of such failure and shall reduce the amount of payments or benefits otherwise due hereunder.

(b) The Company and the Executive intend the terms of this Agreement to be in compliance with Section 409A of the Code. The Company does not guarantee the tax treatment or tax consequences associated with any payment or benefit, including but not limited to consequences related to Section 409A of the Code. To the maximum extent permissible, any ambiguous terms of this Agreement shall be interpreted in a manner that avoids a violation of Section 409A of the Code.

(c) If the Executive believes he is entitled to a payment or benefit pursuant to the terms of this Agreement that was not timely paid or provided, and such payment or benefit is considered deferred compensation subject to the requirements of Section 409A of the Code, the Executive acknowledges that to avoid an additional tax on such payment or benefit pursuant to the provisions of Section 409A of the Code, the Executive must make a reasonable, good faith effort to collect such payment or benefit **no later than 90 days** after the latest date upon which the payment could have been timely made or benefit timely provided without violating Section 409A of the Code, and if not paid or provided, must take further enforcement measures **within 180 days** after such latest date.

24. Notice. Notices given pursuant to this Agreement shall be in writing and, except as otherwise provided by Section 13(d), shall be deemed given when actually received by the Executive or actually received by the Company's Secretary or any officer of the Company other than the Executive. If mailed, such notices shall be mailed by United States registered or certified mail, return receipt requested, addressee only, postage prepaid, if to the Company, to Fiserv, Inc., Attention: Secretary (or President, if the Executive is then Secretary), 255 Fiserv Drive, Brookfield, Wisconsin 53045, or if to the Executive, at the address set forth below the Executive's signature to this Agreement, or to such other address as the party to be notified shall have theretofore given to the other party in writing.

25. No Waiver. No waiver by either party at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by the other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same time or any prior or subsequent time.

26. Coordination with Employment Agreement. This Agreement is the "Double Trigger KEESA" referred to in Paragraph 5.1 of the employment agreement entered into this date by Executive and the Company (the "Employment Agreement"). In the event of a Change in Control of the Company, as defined in this Agreement, the Executive shall be entitled to the benefits of this

Agreement, subject to the non-duplication and other provisions of said Paragraph 5.1. In addition, in the event of a Covered Termination by the Executive for Good Reason or by the Company for reasons other than death, disability or Cause, such that the Executive is entitled to Accrued Benefits and the Termination Payment under this Agreement, then, the provisions of Section 9(a)(iii) hereof shall not apply and the Executive shall be entitled to a gross-up payment pursuant to the excise tax gross-up provisions set forth in Paragraph 5.2 of the Employment Agreement.

27. Headings. The headings herein contained are for reference only and shall not affect the meaning or interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

FISERV, INC.

By: /s/ Donald F. Dillon
Name: Donald F. Dillon
Title: Chairman

Attest: /s/ Charles W. Sprague
Its: Secretary

EXECUTIVE:

/s/ Jeffery W. Yabuki

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This Amended and Restated Employment Agreement made and entered into this 22nd day of December, 2008 (the "Effective Date") by and between Fiserv, Inc., a Wisconsin corporation (the "Company"), and Jeffery W. Yabuki (the "Executive").

WITNESSETH:

WHEREAS, the Executive and the Company entered into an employment agreement on November 7, 2005; and

WHEREAS, the Executive and the Company desire to amend and restate the employment agreement to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and to eliminate certain historic provisions that are no longer applicable.

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

1. Term of Employment.

1.1 The Executive shall commence employment with the Company on December 1, 2005, or such earlier date mutually agreed upon by the Executive and the Company ("Employment Date").

1.2 Commencing on the Employment Date, the Company agrees to employ the Executive, and the Executive agrees to accept such continued employment and serve the Company, in such capacities, with such duties and authority, for such period, at such level of compensation and with such benefits, and upon such other terms and subject to such other conditions, as are hereinafter set forth. The term of Executive's employment shall commence on the Employment Date, and end on December 31, 2009, subject to earlier termination or further renewal as provided in this Agreement (the "Term of Employment").

1.3 Renewal. Executive's Term of Employment shall automatically renew for subsequent one (1) year periods, subject to the terms of this Agreement, unless either party gives written notice 90 days or more prior to the expiration of the then existing Term of Employment of Executive's or the Company's decision not to renew. A decision by the Company not to renew other than as a result of Executive's death or Disability (as defined below), and other than in circumstances which would give rise to a termination for Cause (as defined below), shall be treated as a Termination by the Company without Cause and so governed by Paragraph 6.3.5 below. A decision by the Executive not to renew, other than for Good Reason (as defined below), shall be treated as a Voluntary Resignation, and so governed by the provisions of Paragraph 6.3.4 below.

2. Capacities, Duties and Authority.

2.1 During the Term of Employment, the Executive shall serve as the Company's President and Chief Executive Officer and as a member of the Company's Board of Directors (the "Board"). The Executive shall report directly to the Board, and shall direct and manage the affairs of the Company with such duties, functions and responsibilities as contemplated by the Company's by-laws and as the Board shall designate, provided that such duties, functions and responsibilities are commensurate with the Executive's positions of President and Chief Executive Officer.

2.2 The Executive shall serve the Company faithfully, conscientiously and to the best of the Executive's ability and shall promote the interests and reputation of the Company. Unless prevented by sickness or Disability or during a period of vacation or other approved leave of absence, the Executive shall devote substantially all of the Executive's time, attention, knowledge, energy and skills, during normal working hours, and at such other times as the Executive's duties may reasonably require, to the duties of the Executive's employment, provided, however, that it shall not be a breach of this Agreement for the Executive to manage his own private financial investments or to serve on civic or charitable boards, to continue to serve on the corporate boards on which Executive serves as of the Effective Date, or to be a member of the board of directors of other companies which do not compete with the Company, so long as such directorships have been expressly disclosed to, and approved by, the Board, and provided, further, that all such activities do not materially interfere with the Executive's performance of his duties hereunder, cause harm or concern to the Company's operations, profitability or reputation, or otherwise violate this Agreement.

2.3 The Executive represents and warrants that he is not a party to, or otherwise bound by, any agreement, covenant or other restriction that would in any way conflict with or limit his ability to perform his duties hereunder.

3. Compensation.

3.1 The Executive shall be paid a base salary at the annual rate of \$840,000.00, payable semi-monthly and otherwise in accordance with the regular payroll practices of the Company. At least annually, during the Term of Employment, the Company's Compensation Committee shall consider and appraise the contributions of the Executive to the Company, at such time as the contributions of other senior executives of the Company and adjustments to base compensation are considered or made, and due consideration shall be given to the upward adjustment of the Executive's annual base salary, which evaluation and adjustment to base compensation shall be done at such time as the salaries of the other senior executives of the Company are evaluated. During the Term of Employment, Executive's base salary shall not be decreased.

3.2 The Executive shall be eligible to participate in the Company's Executive Incentive Compensation Plan and any replacement or successor annual bonus plan (the "Annual Bonus Plan"), and, effective January 1, 2008, be eligible to receive a target bonus equivalent to not less than one hundred twenty-five percent (125%) of Executive's base salary for attainment of performance goals or other criteria, terms and conditions as may be established by the Company's Compensation Committee in accordance with the Annual Bonus Plan, with an opportunity to earn a bonus in excess of target based upon above-target performance in accordance with the Annual Bonus Plan.

3.3 Equity and Long-Term Grants. The Executive received or shall receive from the Company equity and long-term grants as follows:

3.3.1 On the Employment Date, the Executive received from the Company: (i) a grant of 145,000 stock options, which will expire ten (10) years after the grant date and will vest over a five (5) year period, twenty percent (20%) on each anniversary of the grant date; (ii) a 45,000 share restricted stock grant with three (3) year cliff vesting and performance-based vesting based on specified earnings per share targets for 2006; (iii) a grant of 7,849 shares of restricted stock with three (3) year cliff vesting and performance-based vesting based on specified earnings per share targets for 2006; and (iv) a grant of 225,000 stock options, which will expire ten (10) years after the date of grant and will vest over a three (3) year period, one third (1/3) on each anniversary of the grant date.

3.3.2 The grants set forth in Paragraph 3.3.1 were made under the Company's Stock Option and Restricted Stock Plan as approved at the Company's 2005 Annual Meeting of Shareholders (the "SORSP") and evidenced by award agreements substantially in the form provided to Executive prior to the Employment Date. The grants set forth in Paragraph 3.3.1 were awarded to Executive in substantial part to compensate the Executive in lieu of compensation the Executive had to forego due to his resignation from his prior employer.

3.3.3 Commencing in 2006, Executive shall be eligible for and shall receive grants of options and/or restricted stock and/or other equity and long-term awards under the Company's long-term incentive compensation program, which are commensurate with his position and are made at such times and on such terms as grants and awards are made to the Company's senior executive officers generally; provided, that with respect to grants and awards, if any, to be made in 2006, there shall be taken into consideration the 145,000 stock options granted to Executive pursuant to Paragraph 3.3.1.(i) above.

3.4 The Executive shall be entitled to take annual vacation without loss or diminution of compensation, not exceeding four (4) weeks, such vacation to be taken at such time or times, and as a whole or in increments, as the Executive shall elect, consistent with the reasonable needs of the Company's business and such vacation policies as may be established by the Board. The Executive shall further be entitled to the number of paid holidays, and leaves for illness or temporary disability in accordance with the policies of the Company for its senior executives, as the Company may amend or terminate such policies from time to time in its sole discretion.

4. Employee Benefit Programs.

4.1 During the Employment Period, the Executive shall be eligible to participate in and shall have the benefit of all the Company's group medical, dental and vision plans and programs, group life and disability insurance plans, the Company's 401(k) plan, and other employee benefit plans and standard benefits as are or may be generally made available to senior executives of the Company.

4.2 Except as otherwise expressly provided in this Agreement, nothing in this Section 4 shall be construed to require the Company to establish, maintain or continue any compensation or benefit plan, program or arrangement.

4.3 Except as otherwise expressly provided by their terms, such compensation or benefit plans, programs or arrangements are subject to modification or termination by the Company at any time.

5. Change in Control of the Company.

5.1 Simultaneous with his execution of this Agreement, Executive will execute a Double Trigger Key Executive Employment and Severance Agreement substantially in the form provided to the Executive prior to the date hereof (the "Double Trigger KEESA"). In the event of a "Change in Control of the Company," as defined under the Double Trigger KEESA, during the Term of Employment, the Executive shall be entitled to the benefits of the Double Trigger KEESA, provided that if the benefits under the Double Trigger KEESA are duplicative of benefits provided under this Agreement, the Executive shall receive only the most favorable benefits (determined on a benefit-by-benefit basis) under the Double Trigger KEESA and this Agreement; and provided, further, that in the event that after such Change in Control the Executive's employment is terminated by the Company without Cause or the Executive voluntarily terminates his employment with the Company for Good Reason, the Executive shall be entitled to a gross up payment determined as set forth in Paragraph 5.2 below.

5.2 Excise Tax Gross-Up.

5.2.1 In the event that any payment or benefit received or to be received by the Executive pursuant to the terms of this Agreement (the "Contract Payments") or of any other plan, arrangement or agreement of the Company or its subsidiaries ("Other Payments" and, together with the Contract Payments, the "Payments") would be subject to the excise tax (the "Excise Tax") imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code") as determined as provided below, the Company shall pay to the Executive, at the time specified in Paragraph 5.2.3, an additional amount (the "Gross-Up Payment") such that the net amount retained by the Executive, after deduction of the Excise Tax on Payments and any federal, state, local income and employment tax and the Excise Tax upon the Gross-Up Payment, and any interest, penalties or additions to tax payable by the Executive with respect thereto, shall be equal to the total present value (using the applicable federal rate as defined in Section 1274(d) of the Code in such calculation) of the Payments at the time such Payments are to be made.

5.2.2 For purposes of determining whether any of the Payments will be subject to the Excise Tax and the amounts of such Excise Tax, (1) the total amount of the Payments shall be treated as "parachute payments" within the meaning of Section 280G(b)(2) of the Code, and all "excess parachute payments" within the meaning of Section 280(G)(b)(1) of the Code shall be treated as subject to the Excise Tax, except to the extent that, in the opinion of independent counsel selected by the Company and reasonably acceptable to the Executive ("Independent Counsel"), a Payment (in whole or in part) does not constitute a "parachute payment" within the meaning of Section 280G(b)(2) of the Code, or such "excess parachute payments" (in whole or in part) are not subject to the Excise Tax, (2) the amount of the Payments that shall be treated as subject to the Excise Tax shall be equal to the lesser of (A) the total

amount of the Payments or (B) the amount of “excess parachute payments” within the meaning of Section 280G(b)(1) of the Code (after applying clause (1) hereof), and (3) the value of any non-cash benefits or any deferred payment or benefit shall be determined by Independent Counsel in accordance with the principles of Sections 280G(d)(3) and (4) of the Code. For purposes of determining the amount of the Gross-Up Payment, the Executive shall be deemed to pay federal income taxes at the highest marginal rates of federal income taxation applicable to the individual in the calendar year in which the Gross-Up Payment is to be made (which, for this purpose, shall include any additional income tax imposed under Section 409A of the Code with respect to the amount of the Payments or Gross-Up Payment subject to such additional income tax) and state and local income taxes at the highest marginal rates of taxation applicable to individuals as are in effect in the state and locality of the Executive’s residence in the calendar year in which the Gross-Up Payment is to be made, net of the maximum reduction in federal income taxes that can be obtained from deduction of such state and local taxes, taking into account any limitations applicable to individuals subject to federal income tax at the highest marginal rates.

5.2.3 The Company shall pay the Executive (or pay on Executive’s behalf to the Internal Revenue Service) the Gross-Up Payment provided for in Paragraph 5.2.1, if any, at such time as the Executive is required to remit the Excise Tax to the Internal Revenue Service or such Excise Tax is required to be withheld under applicable law (but based on Executive’s actual rate of taxation).

5.2.4 If it is established pursuant to a final determination of a court or an Internal Revenue Service proceeding or if it is the opinion of Independent Counsel that the Excise Tax is less than the amount taken into account under Paragraph 5.2.2 hereof, the Executive shall repay to the Company within thirty (30) days of the Executive’s receipt of notice of such final determination or opinion the portion of the Gross-Up Payment attributable to such reduction (plus the portion of the Gross-Up Payment attributable to the Excise Tax and any federal, state, local income and employment tax imposed on the Gross-Up Payment being repaid by the Executive if such repayment results in a reduction in Excise Tax or any federal, state, local income and employment tax deduction) plus any interest received by the Executive on the amount of such repayment. If it is established pursuant to a final determination of a court or an Internal Revenue Service proceeding or if it is the opinion of Independent Counsel that the Excise Tax exceeds the amount taken into account hereunder (including by reason of any payment the existence or amount of which cannot be determined at the time of the Gross-Up Payment), the Company shall make an additional Gross-Up Payment in respect of such excess within thirty (30) days of the Company’s receipt of notice of such final determination or opinion. In the event of any change in, or further interpretation of, Sections 280G or 4999 of the Code and the regulations promulgated thereunder, the Executive shall be entitled, by written notice to the Company, to request an opinion of Independent Counsel regarding the application of such change to any of the foregoing, and the Company shall use its best efforts to cause such opinion to be rendered as promptly as practicable.

6. Termination of Employment.

6.1 The Executive's employment hereunder shall terminate:

6.1.1 upon the death of the Executive;

6.1.2 upon the "Disability" (as defined below) of the Executive, effective upon the giving of a written Notice of Termination in accordance with Paragraph 6.2 below, if and only if, during the Term of Employment, as a result of the Executive's disability due to physical or mental illness or injury (regardless of whether such illness or injury is job-related) which qualifies as a disability under the Company's long term disability plan ("Disability"), the Executive shall have been absent from the Executive's duties hereunder on a full-time basis for a period of six consecutive months, and, within thirty days after the Company notifies the Executive in writing that it intends to terminate the Executive's employment (which notice shall not constitute the Notice of Termination described in Paragraph 6.2), the Executive shall not have returned to the performance of the Executive's duties hereunder on a full-time basis;

6.1.3 at the option of the Company, and subject to the Executive's rights to notice and opportunity to cure as set forth in Paragraph 6.2 below, for Cause, effective on a date specified in the Notice of Termination. For purposes of this Agreement, "Cause" shall mean any of the following:

(a) the Executive's dishonesty or similar serious misconduct directly related to the performance of Executive's duties and responsibilities hereunder, which results from a willful act or omission and which is materially injurious to the operations, financial condition or business reputation of the Company;

(b) the Executive's conviction of a misdemeanor involving moral turpitude or of a felony;

(c) Executive's drug or alcohol abuse which materially impairs the performance of his duties and responsibilities as set forth herein;

(d) substantial continuing willful and unreasonable inattention to, neglect of, or refusal by Executive to perform Executive's duties and responsibilities under this Agreement;

(e) the Executive's willful or intentional material violation of a material provision of the Company's Code of Conduct, as it may be amended from time to time, or other material Company policies in effect from time to time; or

(f) any other willful or intentional material breach or breaches of this Agreement by Executive.

6.1.4 at the option of the Company, for a reason other than death, Disability or Cause, effective upon the giving of a Notice of Termination in accordance with Paragraph 6.2 of this Agreement;

6.1.5 at the option of the Executive, and subject to the Company's rights to notice and opportunity to cure as set forth in Paragraph 6.2(d) below, for Good Reason. For purposes of this Agreement "Good Reason" shall mean the occurrence at any time of any of the following without the Executive's prior written consent:

(a) any breach of this Agreement by the Company, other than an insubstantial and inadvertent failure not occurring in bad faith that the Company remedies promptly after receipt of notice thereof given by the Executive;

(b) any reduction in the Executive's base salary, percentage of base salary available as incentive compensation or bonus opportunity;

(c) the removal of the Executive from, or any failure to reelect or reappoint the Executive to, any of the positions set forth in Paragraph 2.1, except in the event that such removal or failure to reelect or reappoint relates to the termination by the Company of the Executive's employment for Cause or by reason of Disability;

(d) a good faith determination by the Executive that there has been a material adverse change, without the Executive's written consent, in the Executive's working conditions or status with the Company, including but not limited to (A) a significant change in the nature or scope of the Executive's authority, powers, functions, duties or responsibilities as contemplated by Section 2, or (B) a significant reduction in the level of support services, staff, secretarial and other assistance, office space and accoutrements, but in each case excluding for this purpose an isolated, insubstantial and inadvertent event not occurring in bad faith that the Company remedies within ten (10) days after receipt of notice thereof given by the Executive;

(e) the relocation of the Executive's principal place of employment to a location more than 35 miles from the greater Milwaukee, Wisconsin metropolitan area; or

(f) the failure by the Company to obtain an agreement from any successor to the Company to assume this Agreement.

6.1.6 at the option of the Executive, effective thirty (30) days after the giving of written notice to the Company of the exercise of such option for a reason other than Good Reason as set forth in Paragraph 6.1.5, above ("Voluntary Resignation").

6.2 Termination Notice and Procedure. Any termination by the Company or the Executive shall be communicated by a written notice of termination ("Notice of Termination") to the Executive, if such Notice is given by the Company, and to the Company, if such Notice is given by the Executive, all in accordance with the following procedures:

(a) if such termination is for Disability, Cause or Good Reason, the Notice of Termination shall indicate in reasonable detail the facts and circumstances alleged to provide a basis for such termination. No Notice of Termination for Cause shall be delivered unless the Board has made a good faith determination, after providing the Executive with the opportunity to appear before the Board and be heard, that the conduct or acts of the Executive specified in the Notice of Termination occurred and constitute Cause (as defined in Paragraph 6.1.3), and such Notice of Termination provides the Executive with an opportunity to cure such conduct or acts as contemplated by Paragraph 6.2(d) below;

(b) any Notice of Termination by the Company shall have been approved, prior to the giving thereof to the Executive, by a resolution duly adopted by a majority of the directors of the Company (or any successor corporation) then in office;

(c) if the Notice is given by the Executive for Good Reason, the Executive may cease performing his duties hereunder subject to the Company's opportunity to cure below. If the Notice is given by the Company for Cause, then the Executive may cease performing his duties hereunder, subject to the Executive's opportunity to cure pursuant to Paragraph 6.2(d) below;

(d) the Executive shall have thirty days, or such longer period as the Company may determine to be appropriate, to cure any conduct or act, if curable, alleged to provide grounds for termination of employment for Cause. The Company shall have thirty days, or such longer period as the Executive may determine to be appropriate, to cure any conduct or act, if curable, alleged to provide grounds for termination of employment for Good Reason; and

(e) the recipient of any Notice of Termination shall personally deliver or mail in accordance with Paragraph 11.6 below written notice of any dispute relating to such Notice of Termination to the party giving such Notice within fifteen days after receipt thereof; provided, however, that if the Executive's conduct or act alleged to provide grounds for termination by the Company for Cause is curable, then such period shall be thirty days. After the expiration of such period, the contents of the Notice of Termination shall become final and not subject to dispute.

6.3 Obligations of the Company upon Termination of Employment.

6.3.1 Death. In the event of the Executive's death during the Term of Employment, the Term of Employment shall end as of the date of the Executive's death and his estate and/or beneficiaries, as the case may be, shall receive the following, as soon as practicable (unless otherwise provided herein) following the date of Executive's death:

(a) (i) all base salary for the time period ending with the date of termination; (ii) reimbursement for any and all monies advanced by Executive for the time period ending with the termination date for all expenses reimbursable by the Company under this Agreement; and (iii) notwithstanding any provision of any bonus or incentive compensation plan applicable to the Executive, but subject to any irrevocable deferral election then in effect, a lump sum amount, in cash, equal to the amount of any bonus or incentive compensation that has been allocated or awarded to the Executive for a fiscal year or other measuring period under the plan that ends prior to the date of termination but has not yet been paid (collectively, "Earned Amounts"); and

(b) such additional benefits, if any, to which the Executive is expressly eligible following the termination of the Executive's employment on account of death, as may be provided by the then existing plans, programs and/or arrangements of the Company, provided that all equity and long term grants and awards shall be deemed fully vested.

6.3.2 Disability. If the Executive's employment is terminated due to Disability during the Term of Employment, either by the Company or by the Executive, the Term of Employment shall end as of the date of the termination of the Executive's employment (as provided in Paragraph 6.1.2 of this Agreement) and the Executive shall receive the following, as soon as practicable (unless otherwise provided herein) following the date of termination:

(a) Earned Amounts; and

(b) such additional benefits, if any, to which the Executive is expressly eligible following the termination of the Executive's employment on account of Disability, as may be provided by the then existing plans, programs and/or arrangements of the Company, provided that all equity and long term grants and awards shall be deemed fully vested.

6.3.3 Cause. If the Company terminates the Executive's employment for Cause in accordance with the terms set forth in Paragraph 6.1.3 above, the Term of Employment shall end as of the effective date of termination and the Executive shall receive the following, as soon as practicable (unless otherwise provided herein) following the Executive's date of termination:

(a) Earned Amounts; and

(b) such additional benefits, if any, to which the Executive is expressly eligible following the termination of the Executive's employment for Cause, as may be provided by the then existing plans, programs and/or arrangements of the Company.

6.3.4 Voluntary Resignation. If the Executive terminates his employment by Voluntary Resignation, in accordance with the terms set forth in Paragraph 6.1.6 above, the Term of Employment shall end as of the effective date of termination; and the Executive shall receive the following, as soon as practicable following the Executive's date of termination:

(a) Earned Amounts; and

(b) such additional benefits, if any, to which the Executive is expressly eligible following the termination of the Executive's employment by Voluntary Resignation, as may be provided by the then existing plans, programs and/or arrangements of the Company.

6.3.5 Without Cause or With Good Reason. If the Executive's employment is terminated by the Company (other than for death, Disability or Cause) in accordance with the terms set forth in Paragraph 6.1.4 above, or is deemed to have been so terminated pursuant to Paragraph 1.3 above, or if the Executive terminates his employment with Good Reason in accordance with the terms set forth in Paragraph 6.1.5 above, the Term of Employment shall end as of the effective date of termination and the Executive shall receive the following as soon as practicable (unless otherwise provided herein) following the Executive's date of termination:

(a) Earned Amounts;

(b) subject to the Executive's execution of a Separation Agreement and Release of all claims related to the Executive's employment or the termination thereof, in the form annexed hereto, other than any modifications which may be required to effectuate such release based upon any changes in law or Company practice, (i) a lump sum payment in an amount equal to two (2)

times the Executive's base salary and target bonus (the "Termination Payment"); (ii) full vesting of all equity and long-term grants and awards, as well as the right to exercise the stock options granted under Paragraph 3.3.1. for two (2) years, and all other stock options granted for not less than one (1) year, following the date of termination of his employment, but in no event longer than ten (10) years from the date of grant, or if earlier, the latest date the option could have been exercised had Executive remained in employment; (iii) reimbursement by the Company to the Executive for any expenses incurred by the Executive for payment of COBRA premiums or other health insurance premiums for two (2) years following the date of termination of his employment, or until the Executive obtains health care coverage through subsequent employment, whichever is earlier; and

(c) such other benefits, if any, to which the Executive is expressly eligible following the termination of the Executive's employment by the Company without Cause or by the Executive with Good Reason, as may be provided by the then existing plans, programs and/or arrangements of the Company (other than any severance payments payable under the terms of any benefit plan).

6.4 Except as expressly provided by Paragraph 6.3, any payment or benefit provided under Paragraph 6.3 hereof shall be in lieu of any other severance, bonus or other payments, perquisites or benefits, including any further accruals or vesting thereof, to which the Executive might then or, in the future, be eligible pursuant to this Agreement or any statutory or common law claim. In order to preserve the parties' respective legal rights in the event of a dispute, the Executive acknowledges and agrees that in the event the parties dispute whether the Executive shall be eligible for a payment hereunder, such payment shall not be deemed to be earned or otherwise vest hereunder until such time as the dispute is determined by a final judgment of a court of competent jurisdiction or otherwise resolved. The foregoing shall not be deemed to prohibit a court of competent jurisdiction from awarding prejudgment interest under circumstances in which it may deem it appropriate to do so.

6.5 The Termination Payment shall be paid to the Executive in cash equivalent on the first day of the seventh month following the month in which the Executive's Separation from Service occurs, without interest thereon; provided that, if on the date of the Executive's Separation from Service, neither the Company nor any other entity that is considered a "service recipient" with respect to the Executive within the meaning of Code Section 409A has any stock which is publicly traded on an established securities market (within the meaning of Treasury Regulation Section 1.897-1(m)) or otherwise, then the Termination Payment shall be paid to the Executive in cash equivalent within ten (10) business days after the Executive's Separation from Service.

For purposes hereof, the term "Separation from Service" shall have the same meaning as ascribed to such term in the Double Trigger KEESA.

With regard to the benefits described in Paragraph 6.3.5(b)(iii), following the end of the COBRA continuation period, if such benefits are provided under a health plan that is subject to Section 105(h) of the Code, benefits payable under such health plan shall comply with the requirements of Treasury regulation section 1.409A-3(i)(1)(iv) and, if necessary, the Company shall amend such health plan to comply therewith.

7. Acknowledgements; Confidential Information; Competitive Activities; Non Solicitation

7.1 The Executive acknowledges and agrees as follows:

7.1.1 The Company is in the business of providing information management solutions to the financial industry-servicing clients in the United States, and throughout the world.

7.1.2 Since the Company and its subsidiaries (collectively and individually referred to in this Section 7 as the “Fiserv Group Companies”) would suffer irreparable harm if the Executive left the Company’s employ and solicited the business and/or employees of the Fiserv Group Companies, or otherwise interfered with business relationships of the Fiserv Group Companies, it is reasonable to protect the Fiserv Group Companies against such activities by the Executive for a limited period of time after the Executive leaves the Company.

7.1.3 The covenants contained in Paragraphs 7.2, 7.3, and 7.4 below are reasonably necessary for the protection of the Fiserv Group Companies and are reasonably limited with respect to the activities they prohibit, their duration, their geographical scope and their effect on the Executive and the public. The purpose and effect of the covenants simply are to protect the Fiserv Group Companies for a limited period of time from unfair competition by the Executive.

7.2 For the purposes of this Agreement, all confidential or proprietary information concerning the business and affairs of the Fiserv Group Companies, including, without limitation, all trade secrets, know how and other information generally retained on a confidential basis by the Fiserv Group Companies concerning their designs, products, methods, know-how, techniques, systems, engineering data, software codes and specifications, formulae, processes, inventions and discoveries, business strategies, sales, marketing and business plans, acquisition prospects and targets, capital expenditure forecasts or plans, investor initiatives, incentive plans, targets or MBOs, business assessments or evaluations, HR assessments or plans, litigation strategies, approaches or theories and settlement plans with regard thereto, organization plans, tax strategies, financial models, public financial disclosure discussions, concerns, approaches or related issues, international market assessments and strategies, pricing, product plans and the identities of, and the nature of the Fiserv Group Companies’ dealings with, their suppliers and customers, whether or not such information shall, in whole or in part, be subject to or capable of being protected by patent, copyright or trademark laws, shall constitute “Confidential Information.” The Executive acknowledges that he has had and, will from time to time have access to and has obtained and will in the future obtain knowledge of certain Confidential Information, and that improper use or revelation thereof by the Executive, during or after the termination of his employment by the Company, could cause serious injury to the business of the Fiserv Group Companies. Accordingly, the Executive agrees that, unless otherwise required by law, he will forever keep secret and inviolate all Confidential Information which shall have come or shall hereafter come into his possession, and that he will not use the same for his own private

benefit, or directly or indirectly for the benefit of others, and that he will not disclose such Confidential Information to any other person. If the Executive is legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, he shall provide the Company with prompt prior written notice of such legal requirement, so that the Fiserv Group Companies may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Paragraph. In any event, the Executive may furnish only that portion of the Confidential Information which the Executive is advised by legal counsel is required, and he shall exercise his best efforts to obtain an order or assurance that confidential treatment will be accorded such Confidential Information as is disclosed. Notwithstanding anything contained herein which may be to the contrary, the term "Confidential Information" does not include any information which at the time of disclosure or thereafter is generally available to and known by the public, other than as a result of a disclosure directly or indirectly by the Executive.

7.3 In addition to the acknowledgments by the Executive set forth in Paragraph 7.1 above, the Executive acknowledges that the services provided by him for the Company are a significant factor in the creation of valuable, special and unique assets which are expected to provide the Fiserv Group Companies with a competitive advantage. Accordingly, the Executive agrees as follows:

7.3.1 Commencing on the Effective Date, and thereafter for a period ending twelve (12) months following Executive's date of termination, the Executive shall not, directly or indirectly, on his behalf or on behalf of any other individual, association or entity, as agent or otherwise:

(a) contact any of the clients of any of the Fiserv Group Companies for whom Executive directly performed any services or had any direct business contact for the purpose of soliciting business or inducing such client to acquire any product or service that at anytime during the term of this Agreement is provided or under development by the Fiserv Group Companies from any entity other than the Fiserv Group Companies;

(b) contact any of the clients or prospective clients of any of the Fiserv Group Companies whose identity or other client specific information the Executive discovered or gained access to as a result of his access to the Fiserv Group Companies' Confidential Information for the purpose of soliciting or inducing any of such clients or prospective clients to acquire any product or service that at any time during the term of this Agreement is provided or under development by any of the Fiserv Group Companies from any entity other than the Fiserv Group Companies;

(c) use the Fiserv Group Companies' Confidential Information to solicit, influence or encourage any clients or potential clients of any of the Fiserv Group Companies to divert or direct their business to the Executive or any other person, association or entity by or with whom the Executive is employed, associated, engaged as agent or otherwise affiliated; or

(d) encourage, induce or entice any employee of any of the Fiserv Group Companies with access to or possession of Confidential Information of the Fiserv Group Companies to leave the employment of the Fiserv Group Companies.

7.3.2 Commencing on the Effective Date, and for a period ending twelve (12) months following Executive's date of termination, without the prior written approval of the Company's Board of Directors, the Executive shall not participate in the management of, be employed by or own any business enterprise at a location within the United States that engages in substantial competition with the Company or any of its subsidiaries in the business described in Paragraph 7.1.1 above, where such enterprise's revenues from any competitive activities amount to 10% or more of such enterprise's net revenues and sales for its most recently completed fiscal year; provided, however, that nothing in this Paragraph shall prohibit the Executive from owning stock or other securities of a competitor amounting to less than five percent of the outstanding capital stock of such competitor.

7.4 The Executive acknowledges and agrees as follows:

7.4.1 The Executive agrees to promptly disclose to the Company any and all discoveries, developments, inventions, products, services, processes, formulas, and improvements thereof ("Inventions"), whether or not patentable, relating to the products, services, commercial or other endeavors of the Fiserv Group Companies, which the Executive may invent, discover, develop or learn in connection with Executive's employment. The Executive agrees that such inventions are the exclusive and absolute property of the Company and that the Company will be the sole and absolute owner of all intellectual property rights, including patent and any and all other rights in connection therewith. The Executive agrees to give all reasonable assistance in the preparation and/or execution of any papers the Company may request to reflect such interest and to secure patent or other protection for such Inventions.

7.4.2 The Executive understands that in the course of employment, the Executive may prepare writings, drawings, diagrams, designs, specifications, manuals, instructions and other materials, and computer code and programs ("Works"). Such Works are "works made for hire" under United States copyright law and the Company shall be the owner of the Executive's entire right of authorship in such Works. If such Works are deemed by operation of law not to be "works made for hire," the Executive hereby assigns to the Company the Executive's entire right of authorship, including copyright ownership in such Works and agrees to execute any document deemed necessary by the Company in connection therewith.

7.5 In the event of a judicial determination that the Executive has breached his obligations under Paragraphs 7.2, 7.3, or 7.4, in addition to any damages or other relief otherwise available to the Fiserv Group Companies, the Executive shall be obligated to reimburse the Company for any payments to the Executive under Paragraph 6.3.5(b)(i) and (iii). In addition, following a judicial determination, the prevailing party shall be entitled to be reimbursed by the non-prevailing party for reasonable legal fees and expenses incurred by the prevailing party in connection with the judicial proceeding seeking to enforce the provisions of Section 7 hereof.

7.6 For the purposes of this Agreement, the period of restriction of confidentiality or proprietary information and competition is intended to limit disclosure and competition by the Executive to the maximum extent permitted by law. If it shall be

finally determined by any court of competent jurisdiction ruling on this Agreement that the scope or duration of any limitation contained in this Agreement is too extensive to be legally enforceable, then the parties hereby agree that the provisions hereof shall be construed to be confined to such scope or duration (not greater than that provided for herein) as shall be legally enforceable, and the Executive hereby consents to the enforcement of such limitations as so modified.

7.7 The Executive acknowledges that any violation by him of the provisions of this Section 7 would cause serious and irreparable damage to the Fiserv Group Companies. He further acknowledges that it might not be possible to measure such damage in money. Accordingly, the Executive agrees that, in the event of a breach or threatened breach by the Executive of the provisions of this Section, the Fiserv Group Companies may seek, in addition to any other rights or remedies, including money damages or specific performance, an injunction or restraining order, without the need to post any bond or other security, prohibiting the Executive from doing or continuing to do any acts constituting such breach or threatened breach.

8. Reimbursement of Business Expenses.

During the Term of Employment, subject to and in accordance with the Company's policies with regard to such matters applicable to the President and Chief Executive Officer, the Executive is authorized to incur reasonable business expenses in carrying out his duties and responsibilities under the Agreement, and the Company shall promptly reimburse him for all such properly documented business expenses incurred in accordance with the Company's travel and business expense reimbursement policy applicable to the President and Chief Executive Officer in connection with carrying out the business of the Company.

9. Directors and Officers Liability Coverage, Indemnification.

Executive shall be entitled to coverage under such directors and officers liability insurance policies maintained from time to time by the Company for the benefit of its directors and officers. The Company shall indemnify and hold Executive harmless, to the fullest extent permitted by the laws of the State of Wisconsin, from and against all costs, charges and expenses (including reasonable attorneys' fees), and shall, consistent with the laws of the State of Wisconsin, provide for the reimbursement of expenses, incurred or sustained in connection with any action, suit or proceeding to which the Executive or his legal representatives may be made a party by reason of the Executive's being or having been a director, officer or employee of the Company or any of its affiliates or employee benefit plans. Such reimbursement shall be made promptly (but in no event later than the end of the calendar year following the year in which the expense was incurred) following Executive's written request to the Company for reimbursement. The provisions of this Section 9 shall not be deemed exclusive of any other rights to which the Executive seeking indemnification may have under any by-law, agreement, vote of stockholders or directors, or otherwise. The provisions of this Section 9 shall survive the termination of this Agreement for any reason.

10. Miscellaneous.

10.1 This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin without reference to principles of conflict of laws. Any legal suit, action or proceeding against any party hereto arising out of or relating to this Agreement shall be instituted in a federal or state court in the State of Wisconsin, and each party hereto waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding and each party hereto irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

10.2 Upon the Effective Date, this Agreement and the Double Trigger KEESA shall incorporate the complete understanding and agreement between the parties with respect to the subject matter hereof and thereof and supersede any and all other prior or contemporaneous agreements, written or oral, between the Executive and the Company or any predecessor thereof, with respect to such subject matter. No provision hereof may be modified or waived except by a written instrument duly executed by the Executive and the Company.

10.3 It is intended that any amounts payable under this Agreement and the Company's and Executive's exercise of authority or discretion hereunder shall comply with Section 409A of the Code (including the Treasury regulations and other published guidance relating thereto) so as not to subject Executive to the payment of any interest or additional tax imposed under Section 409A of the Code. In furtherance of this intent, to the extent that any Treasury regulations, guidance or changes to Section 409A after the date of this Agreement would result in the Executive becoming subject to interest and additional tax under Section 409A of the Code, the Company and Executive agree to amend this Agreement in order to bring this Agreement into compliance with Code Section 409A.

10.4 The Company shall be eligible to deduct and withhold from all compensation payable to the Executive pursuant to this Agreement all amounts required to be deducted and withheld therefrom pursuant to any present or future law, regulation or ordinance of the United States of America or any state or local jurisdiction therein or any foreign taxing jurisdiction. In addition, if prior to the date of payment of the Termination Payment or other deferred compensation payments or benefits hereunder, the Federal Insurance Contributions Act (FICA) tax imposed under Sections 3101, 3121(a) and 3121(v)(2) of the Code, where applicable, becomes due with respect to any payment or benefit to be provided hereunder, the Company may provide for an immediate payment of the amount needed to pay the Executive's portion of such tax (plus an amount equal to the taxes that will be due on such amount) and the Executive's Termination Payment shall be reduced accordingly.

10.5 Section headings are included in this Agreement for convenience of reference only and shall not affect the interpretation of the text hereof.

10.6 Notices given pursuant to this Agreement shall be in writing and, except as otherwise provided by Paragraph 6.2 of this Agreement, shall be deemed given when actually received by the Executive or actually received by the Company's Secretary or any officer of the Company other than the Executive. If mailed, such notices shall be mailed by United States registered or certified mail, return receipt requested, addressee only, postage prepaid, if to the Company, to Fiserv, Inc., Attention: Secretary, 255 Fiserv Drive,

Brookfield, Wisconsin 53045, or if to the Executive, to the most recent address shown on the records of the Company, or to such other address as the party to be notified shall have theretofore given to the other party in writing.

10.7 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which together shall constitute one and the same instrument.

10.8 This Agreement may be assigned by the Company to, and shall inure to the benefit of, any successor to substantially all the assets and business of the Company as a going concern, whether by merger, consolidation or purchase of substantially all of the assets of the Company or otherwise, provided that such successor shall assume the Company's obligations under this Agreement.

IN WITNESS WHEREOF, each of the Company and the Executive has executed this Agreement to become effective on the Effective Date.

EXECUTIVE

FISERV, INC.

By: /s/ Jeffery W. Yabuki
Jeffery W. Yabuki

By: /s/ Donald F. Dillon
Donald F. Dillon
Chairman

/s/ Charles W. Sprague
Charles W. Sprague, Witness

/s/ Charles W. Sprague
Charles W. Sprague, Witness

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This Agreement is made this 22nd day of December, 2008, by and between Fiserv, Inc., on behalf of itself and its subsidiaries and affiliates ("**Company**"), and Thomas Warsop ("**Employee**").

WHEREAS, the Company and Employee entered into an Employment Agreement on November 21, 2006; and

WHEREAS the Employee and the Company desire to amend and restate the employment agreement to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and to eliminate certain historic provisions that are no longer applicable.

NOW THEREFORE, in consideration of the premises set forth herein and intending to be legally bound, the parties hereto agree as follows:

1. The Company agrees to employ Employee, and Employee agrees to be employed by the Company. During his employment, Employee agrees to serve as Group President with such further responsibilities and duties commensurate with such position as contemplated by the Company's by-laws and reasonably implemented by the Board of Directors and Employee's Direct Supervisor (as hereinafter defined) subject to the further terms and conditions of this Agreement.
2. Employee agrees to accumulate stock ownership in the Company at a minimum level of four times the value of his salary, no later than the fifth anniversary of the date hereof.
3. The term of this Agreement shall begin on the date first written above and shall continue until 12 months after termination of Employee's employment (the "**Term**"). Employee's employment shall begin on his first date of employment and shall continue until terminated by either party upon written notice to the other party (the "**Employment Term**").
4. Employee hereby represents that he is free and able to enter into this Agreement with Company and that there is no reason, known or unknown, which will prevent his performance of the terms and conditions contained in this Agreement except for Employee's "Equity Related Agreement" with EDS, which the Company has reviewed and attached hereto as Exhibit D. In the event that EDS attempts to enforce any of its potential rights or remedies under the "Equity Related Agreement" due to Employee's employment with the Company, the Company agrees to indemnify and hold Employee harmless from and against any such claims, demands, or suits including, but not limited to, assuming the cost of Employee's defense, provided, however, that Employee at the Company's request shall attempt to secure a release from EDS with respect to any obligations set forth in Employee's Agreement set forth in Exhibit D.
5. During the Employment Term, Employee shall devote his full business time, best efforts and business judgment, faithfully, conscientiously and to the best of his ability to the advancement of the interests of the Company and to the discharge of the responsibilities and offices held by him. Employee shall not engage in any other business activity, whether or not pursued for

pecuniary advantage, except as may be approved in advance by the Company, provided, however, that the foregoing shall not prohibit or limit Employee from participating in civic, charitable or other not-for-profit activities or to manage personal passive investments, provided that such activities do not materially interfere with Employee's services required under this Agreement and do not violate the Code of Conduct or other corporate policies of Fiserv. Employee hereby acknowledges that he has read Fiserv's Code of Conduct in effect as of the date hereof, attached hereto as Exhibit A, and agrees that he will comply with such Code of Conduct and other Fiserv corporate policies regarding activities in the workplace, as they may be amended from time to time, in all material respects.

6. For all services to be rendered by Employee in any capacity during the term of this Agreement, the Company shall pay or cause to be paid to Employee and shall provide or cause to be provided to him the following:

(a) An annual base salary at a minimum rate of \$350,000 per year, commencing on his first day of employment, which is expected to be January 2, 2007, payable in accordance with the normal payroll practices and schedule of the Company. Beginning in February 2008 and thereafter, the Employee's direct supervisor ("Direct Supervisor") will determine Employee's annual base salary, it being understood by Employee that adjustments to annual base salary will be for unusual events and will not typically be made each year. To that end, Employee's Direct Supervisor will review annually the performance of Employee. The term "annual base salary" shall not include any payment or other benefit that is denominated as or is in the nature of a bonus, incentive payment, commission, profit-sharing payment, retirement or pension accrual, insurance benefit, other fringe benefit or expense allowance, whether or not taxable to Employee as income.

(b) In addition to the salary provided above, as of the date of commencement of employment and thereafter, Employee shall be entitled to participate in the Management Bonus Plan or other incentive compensation program, as offered by the Company from time to time for senior executives of the Company. For the calendar year 2007, Employee will have a target bonus of 100% of annual base salary (\$350,000) with an opportunity to achieve a maximum bonus of 200% of annual base salary (\$700,000), to be paid no later than March 15, 2008, according to the Company's usual practice, except that in 2007 only Employee shall receive a draw ("Draw") against such target bonus in the amount of \$12,500 per month, payable on the date of the last salary check of each month. If the Company terminates Employee for cause, as defined in Section 7(c), or Employee voluntarily ceases his employment with the Company on or before the date of payment of any incentive compensation hereunder in March 2008, Employee shall not be entitled to any portion of any payment under the Management Bonus Plan or other incentive compensation program and shall be obligated to pay back all Draws paid by the Company in 2007. For clarity, if Employee does not achieve a bonus in excess of the aggregate amount of Draws paid by the Company in 2007 in respect of such bonus, Employee shall not be obligated to refund any amounts paid in connection with such Draws, except in the circumstances set forth in the previous sentence where the Employee is not employed by the Company on the date of payment of any incentive compensation hereunder in March 2008.

(c) The Company shall pay to Employee a one-time bonus in the amount of \$450,000. Such bonus will be payable not later than March 31, 2007, but shall be repaid in full by Employee if Employee shall be terminated for cause, as defined in Section 7(c), or shall voluntarily terminate his employment with the Company, in either case prior to March 31, 2008.

(d) The Employee shall receive equity in the Company (each a "**Stock Program**") as follows:

(i) As of the date of commencement of employment by Employee hereunder, Fiserv shall grant to Employee pursuant to the terms of the Fiserv, Inc. Stock Option and Restricted Stock Plan (the "**Stock Option and Restricted Stock Plan**"), an option to purchase 15,000 shares of Common Stock, \$.01 par value, of Fiserv (**Fiserv Common Stock**). The exercise price of such options shall equal the fair market value of Fiserv Common Stock as determined under the terms of the Stock Option and Restricted Stock Plan on the date of commencement of employment hereunder. Such options shall vest over a four-year period, with $\frac{1}{3}$ of such options vesting on each of the second, third and fourth anniversary dates of the date of grant.

(ii) On the date of commencement of employment hereunder, Employee shall receive 15,000 shares of restricted stock under the terms of the Stock Option and Restricted Stock Plan and the restricted stock agreement covering such shares of restricted stock. Such shares shall vest on the fourth anniversary of the date of the commencement of employment hereunder.

(iii) As of the date of commencement of employment hereunder, Employee shall thereafter be eligible to participate in the Fiserv Senior Managers and Senior Professionals Stock Option and Restricted Stock Program. Options and restricted stock granted thereunder may be subject to participation levels and vesting schedules not commensurate with Employee's position and may be determined in connection with Employee's annual performance evaluation and granted annually during the Employment Term. For the calendar year 2007, Employee will have a target range of one to two times annual base salary, to be issued or granted no later than March 15, 2008, according to the Company's usual practice. If Employee shall not be employed by the Company on the date of grant of any options or restricted stock hereunder, Employee shall not be entitled to any portion of any such options or restricted stock award. Notwithstanding anything to the contrary, all awards of options or restricted stock are subject to the approval of the Company's Board of Directors or its designated committee. Vesting of such equity award will follow normal guidelines for similarly situated executives of the Company, established by the Board of Directors of the Company at the time.

All stock options or restricted stock granted or issued hereafter will be subject to the terms of the Stock Option and Restricted Stock Plan as it may be amended from time to time and of the specific stock option or restricted stock agreement pursuant to which any such stock options or restricted stock may be granted or issued from time to time. The terms of the specific stock option or restricted stock agreement pursuant to which stock options or restricted stock may be granted or issued hereunder shall govern treatment of such stock options or restricted stock in the event of the death or disability (as defined in any such agreement) of Employee. Such options will also have vesting and other terms as specified in the stock option agreement covering such stock options or restricted stock, which may be different than other employees of Fiserv.

(e) In addition to the salary and incentive compensation provided above, Employee shall be entitled to participate in any employee benefit plans, welfare benefit plans, retirement plans, and other fringe benefit plans from time to time in effect for senior executives of the Company generally provided, however, that such right or participation in any such plans and the degree or amount thereof shall be subject to the terms of the applicable plan documents, generally applicable Fiserv policies and to action by the Board of Directors of Fiserv or any administrative or other committee provided in or contemplated by such plan, it being mutually agreed that this Agreement is not intended to impair the right of any committee or other group or person concerned with the administration of such plans to exercise in good faith the full discretion reposed in them by such plans.

(f) Employee shall be entitled to a minimum of four weeks paid vacation in accordance with the Company's standard vacation policies.

(g) All compensation or other benefits payable or owing to Employee hereunder shall be subject to withholding taxes and other legally required deductions pursuant to federal, state or local law.

7. Employee's employment hereunder shall terminate under the following circumstances:

(a) In the event Employee dies, this Agreement and the Company's obligations under this Agreement shall terminate as of the end of the month during which his death occurs.

(b) If Employee, due to physical or mental illness, becomes so disabled as to be unable to perform substantially all of his duties, and employment would terminate according to the benefit plans and policies of the Company.

(c) Employee's employment may be terminated for cause, effective immediately upon written notice to Employee by the Company that shall set forth the specific nature of the reasons for termination. Only the following acts or omissions by Employee shall constitute "cause" for termination:

(i) dishonesty or similar serious misconduct, directly related to the performance of Employee's duties and responsibilities hereunder, which results from a willful act or omission and which is injurious to the operations, financial condition or business reputation of the Company;

(ii) Employee being named as a defendant in any criminal proceedings, and as a result of being named as a defendant, the operations, financial condition or reputation of the Company are materially injured or Employee is convicted of a crime;

(iii) Employee's drug or alcohol use in violation of any Company policy or which materially impairs the performance of his duties and responsibilities as set forth herein;

(iv) substantial, continuing willful and unreasonable inattention to, neglect of or refusal by Employee to perform Employee's duties or responsibilities under this Agreement;

(v) willful and intentional violation of a material provision of the Fiserv Code of Conduct, as it may be amended from time to time, or other Fiserv corporate policies regarding activities in the workplace in effect at the time; or

(vi) any other willful or intentional breach or breaches of this Agreement by Employee, which breaches are, singularly or in the aggregate, not cured within 30 days of written notice of such breach or breaches to Employee from the Company.

(d) Employee's employment may be terminated by the Employee by written notice to the Company and Employee's Direct Supervisor in the event of a material breach by the Company of any of the provisions of this Agreement provided, however, that the Company shall have been given notice at least 30 days in advance of the anticipated termination date and an opportunity to cure any such event of a material breach. In the event of termination pursuant to the first sentence of this subsection (d), Employee shall be entitled to receive termination benefits in accordance with subsection (f) below. If Employee terminates his employment for reasons other than those enumerated in the first sentence of this subsection (d), he or she shall not be entitled to termination benefits described in subsection (f) below.

(e) Employee's employment may be terminated at the election of the Company upon written notice to Employee by the Company at any time for the convenience of the Company.

(f) If Employee's employment is terminated by the Company for any reason other than as specified in subsection (a), (b) or (c) above or if terminated by Employee pursuant to the first sentence of subsection (d) above, subject to execution by Employee of a general release in favor of the Company, Employee shall be entitled to:

(i) receive a sum equal to 12 months of salary plus the smaller of \$150,000 or the bonus earned in the prior year, at the salary rate in effect immediately prior to the notice of termination;

(ii) equity awards pursuant to Section 4(d)(i) and 4(d)(ii) above shall immediately vest and Employee shall have 30 days from the date of termination to exercise any options;

(iii) the benefit of additional vesting of any options or shares of restricted stock granted to Employee pursuant to any Stock Program as though the Employee had been employed for the additional 12-month period; and

(iv) reimbursement by the Company to the Employee for any expenses incurred by the Employee for payment of COBRA premiums for 12 months following the date of termination of his employment, or until the Employee obtains health care coverage through subsequent employment, whichever is earlier.

The payment due under subsection (f)(i) shall be paid to the Employee in a cash equivalent lump sum on the first day of the seventh month following the month in which the Employee's Separation from Service occurs, without interest thereon; provided that, if on the date of the Employee's Separation from Service, neither the Company nor any other entity that is considered a "service recipient" with respect to the Employee within the meaning of Code Section 409A has any stock which is publicly traded on an established securities market (within the meaning of Treasury Regulation Section 1.897-1(m)) or otherwise, then such payment shall be paid to the Employee in a cash equivalent lump sum within ten (10) business days after the Employee's Separation from Service.

For purposes hereof, the term "Separation from Service" shall have the same meaning as ascribed to such term in the Employee's Key Executive Employment and Severance Agreement with the Company.

All other incentive compensation and benefits being received by Employee shall cease upon termination of employment, subject to applicable law.

8. The Employee Confidential Information and Development Agreement of the Company, attached hereto as Exhibit B, is hereby incorporated herein by reference. Employee hereby confirms that he is bound by its terms. Such confidential information is understood to include, without limitation, products, technology, intellectual property, customer lists, prospect lists and price lists, or any part of such items, and any information relating to Company's method and technique used in servicing its customers.

9.

(a) For purposes of this Section 9, the following definitions apply:

(i) "**Customer**" means any person, association or entity: (1) for which Employee has directly performed services, (2) for which Employee has supervised others in performing services, or (3) about which Employee has special knowledge as a result of his employment with the Company, during all or any part of the 24-month period ending on the date of the termination of his employment with the Company.

(ii) "**Competing Product or Service**" means any product or service which is sold in competition with, or is being developed and which will compete with, a product or service developed, manufactured, or sold by the Company. For purposes of this Agreement, "Competing Products or Services" are limited to products and/or services for which Employee participated in the development, planning, testing, sale, marketing or evaluation of on behalf of the Company in or during any part of the last 24 months of his employment with the Company, or for which Employee supervised one or more Company employees, units, divisions or departments in doing so.

(iii) "**Special Knowledge**" means material, non-public information about a person, association or entity that Employee learned as a result of his employment with the Company and/or the Company's client development or marketing efforts during all or any part of the last 24 months of his employment with the Company.

(b) Employee agrees that the Company's customer contacts and relations are established and maintained at great expense. Employee further agrees that, as an employee of the Company, he or she will have unique and extensive exposure to and contact with the Company's customers and employees, and that he or she will have had the opportunity to establish unique relationships that would enable him to compete unfairly against the Company. Moreover, Employee acknowledges that he or she will have had unique and extensive knowledge of the Company's trade secret and confidential information, and that such information, if used by him or others, would allow him or others to compete unfairly against the Company. Therefore, in consideration of the compensation and benefits paid to him pursuant to this Agreement, Employee agrees that, for a period of 12 months after the date of the termination of his employment, Employee will not, either on his own behalf or on behalf of any other person, association or entity:

(i) Contact any Customer for the purpose of soliciting or inducing such client to purchase a Competing Product or Service;

(ii) Solicit an employee of the Company to terminate his employment with the Company;

(iii) Become financially interested in, be employed by or have any connection with, directly or indirectly, either individually or as owner, partner, agent, employee, consultant, creditor or otherwise, except for the account of or on behalf of the Company, or its affiliates, in any business or activity listed on Exhibit C, or any affiliate, successor or assign of such business or activity or any other business enterprise that engages in substantial competition with the Company or any of its subsidiaries in the business of providing management solutions to the financial industry; provided, however, that nothing in this Agreement shall prohibit Employee from owning publicly traded stock or other securities of a competitor amounting to less than one percent of such outstanding class of securities of such competitor; or

(iv) Become an owner, partner, director or officer of a company that develops, sells or markets a Competing Product or Service.

(c) Notwithstanding any other provision of this Agreement, this Section 9:

(i) Shall not bar Employee from all employment. Employee warrants and agrees that there are ample employment opportunities that he or she could fill following his employment with the Company, in his field of experience, without violating this Agreement;

(ii) Shall not bar Employee from performing clerical, menial or manual labor;

(iii) Subject to Section 9(b)(iii), including the proviso thereof, shall not prohibit Employee from investing as a passive investor in the capital stock or other securities of a publicly traded corporation listed on a national security exchange.

10. Employee acknowledges and agrees that compliance with this Agreement is necessary to protect the Company, and that a breach of this Agreement will result in irreparable and continuing damage to the Company for which there will be no adequate remedy at law. Employee hereby agrees that in the event of any such breach of this Agreement, the Company, and its successors and assigns, shall be entitled to injunctive relief and to such other and further relief as is proper under the circumstances. Employee further agrees that, in the event of his breach of this Agreement, the Company shall be entitled to recover the value of any amounts previously paid or payable to Employee pursuant to Section 6(b) hereof and of any Stock Program. Employee understands and agrees that the losses incurred by the Company as a result of such breach of this Agreement would be difficult or impossible to calculate, as they are based on, among other things, the value of the knowledge and information gained by the Employee at the expense of the Company, but that the actual value exceeds the amounts paid or payable to Employee pursuant to Section 6(b) and any Stock Program. Accordingly, the amount paid or payable to Employee pursuant to Section 6(b) and any Stock Program herein represents the Employee's agreement to pay and the Company's agreement to accept as liquidated damages, and not as a penalty, such amount for any such Employee breach. Employee and the Company hereby agree to submit themselves to the jurisdiction of any Court of competent jurisdiction in any disputes that arise under this Agreement.

(a) The Company shall be eligible to deduct and withhold from all compensation payable to the Employee pursuant to this Agreement all amounts required to be deducted and withheld therefrom pursuant to any present or future law, regulation or ordinance of the United States of America or any state or local jurisdiction therein or any foreign taxing jurisdiction. In addition, if prior to the date of payment of the amount due under Section 7(f)(i) or other deferred compensation payments or benefits hereunder, the Federal Insurance Contributions Act (FICA) tax imposed under Sections 3101, 3121(a) and 3121(v)(2) of the Code, where applicable, becomes due with respect to any payment or benefit to be provided hereunder, the Company may provide for an immediate payment of the amount needed to pay the Employee's portion of such tax (plus an amount equal to the taxes that will be due on such amount) and the Employee's payment or benefits shall be reduced accordingly.

11. Employee agrees that the terms of this Agreement shall survive the termination of his employment with the Company.

12. This Agreement shall be governed by and construed in accordance with the laws in the State of New York.

13. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

14. THE EMPLOYEE HAS READ THIS AGREEMENT AND AGREES THAT THE CONSIDERATION PROVIDED BY THE COMPANY IS FAIR AND REASONABLE AND FURTHER AGREES THAT GIVEN THE IMPORTANCE TO THE COMPANY OF ITS CONFIDENTIAL AND PROPRIETARY INFORMATION, THE POST-EMPLOYMENT RESTRICTIONS ON THE EMPLOYEE'S ACTIVITIES ARE LIKEWISE FAIR AND REASONABLE.

15. If any provision of this Agreement shall be declared illegal or unenforceable by a final judgment of a court of competent jurisdiction, the remainder of this Agreement, or the application of such provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each remaining provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

16. No term or condition of this Agreement shall be deemed to have been waived, nor shall thereby create any estoppel against the enforcement of any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel. No such written waiver shall be deemed a continuing waiver unless specifically stated therein, and each such waiver shall operate only as to the specific term or condition for the future or as to any act other than that specifically waived.

17. No term or provision or the duration of this Agreement shall be altered, varied or contradicted except by a writing to that effect, executed by authorized officers of the Company and Fiserv and by Employee, and in compliance with Internal Revenue Code Section 409A.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands.

EMPLOYEE

/s/ Thomas W. Warsop III
Signature

Thomas W. Warsop III
Printed Name

Date: December 22, 2008

FISERV, INC.

By: /s/ Jeffery W. Yabuki
Jeffery W. Yabuki

President and Chief Executive Officer
Title

Date: December 22, 2008